

No. 14217

United States
Court of Appeals
for the Ninth Circuit

L. GLENN SWITZER, IDA H. SWITZER,
HOWARD A. SWITZER and FLORENCE
M. SWITZER, Petitioners,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petitions to Review Decisions of The Tax Court
of the United States

FILED
JUL 26 1964

PAUL P. O'NEIL
CLERK

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[Clerk's Note: When deemed likely to be of important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

JOHN I. BOLEN, C.P.A.,
OWEN E. O'NEIL, Esq.,
LOUIS T. FLETCHER, Esq.,
ALVA C. BAIRD, Esq.,
WM. A. CRUIKSHANK, Esq.

For Respondent:

R. E. MAIDEN, JR., Esq.

DOCKET ENTRIES

1950

May 15—Petition received and filed. Taxpayer notified. Fee paid.

May 16—Copy of petition served on General Counsel.

May 15—Request for Circuit hearing in Los Angeles, Calif. filed by taxpayer. 5/18/50—Granted.

July 3—Answer filed by General Counsel.

July 11—Copy of answer served on taxpayer. Los Angeles, Calif.

1951

Nov. 21—Hearing set February 4, 1952, Los Angeles, Calif.

1952

Jan. 14—Motion for leave to amend answer, amended answer lodged, filed by General Counsel. 1/15/52—Granted.

1952

Jan. 15—Motion for continuance, filed by taxpayer.
Granted.

Jan. 25—Hearing set April 14, 1952—Los Angeles,
Calif.

Feb. 13—Entry of appearance of Owen E. O'Neil
as counsel filed.

Feb. 13—Entry of appearance of Louis T. Fletcher,
as counsel filed.

Feb. 26—Reply to amended answer filed by tax-
payer. Copy served 2/27/52.

Mar. 25—Amendment to hearing notice.

Apr. 3—Motion for leave to amend amended an-
swer, amendment to amended answer
lodged, filed by General Counsel.

Apr. 4—Motion for leave to amend amended an-
swer granted, amendment filed. 4/7/52
Copy served.

Apr. 17-18—Hearing had before Judge Rice on
merits, petitioner's oral motion to vacate
granted motion for leave to file amend-
ment to amended answer, denied. Peti-
tioner's oral motion to consolidate with
dockets 28257, 28258 and 28259 granted.
Petitioner's motion to dismiss asserted
fraud and negligence penalties is denied.
Entry of appearance of Alva C. Baird
and Wm. A. Cruikshank, Jr., Stipulation
of facts, motion to dismiss and reply to
amendment to amended answer all filed at
hearing. Respondent's brief, 7/17/52; Pe-

1952

Apr. 17—Petitioner's Brief, 9/2/52; Respondent's
18 (cont) reply, 10/2/52.

Apr. 30—Petitioner's reply served on General
Counsel.

May 1—Transcript of Hearing 4/17/52 filed.

July 16—Brief filed by General Counsel.

Aug. 27—Motion for extension to Sept. 15/52 to file
reply brief filed by taxpayer—Granted.

Sept. 11—Motion for extension to Sept. 30, 1952 to
file reply brief filed by taxpayer—Granted.

Sept. 30—Brief filed by taxpayer. 10/1/52 Copy
served.

Oct. 10—Motion to amend brief by substituting
pages 3 and 4 filed by taxpayer. 10/10/52
—Granted.

Nov. 6—Motion for leave to file memorandum sup-
plementing brief. Memorandum brief
lodged, filed by taxpayer. 11/6/52—
Granted. 11/7/52 Copy served.

1953

June 30—Findings of fact and opinion rendered.
Judge Rice. Decision will be entered under
Rule 50. 7/2/53 Copy served.

Sept. 30—Agreed computation filed.

Oct. 5—Decision entered. Judge Rice. Div. 12.

1954

Jan. 4—Petition for Review by U. S. Court of
Appeals for the Ninth Circuit filed by
taxpayer.

Jan. 4—Affidavit of service by mail, of petition
for review, filed.

1954

Jan. 11—Designation of Record on Appeal, filed by petitioner.

Jan. 11—Proof of service of Designation of Record filed.

The Tax Court of the United States
Docket No. 28256

L. GLENN SWITZER, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:LHP) dated February 24, 1950, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual whose address is 3464 East Foothill Boulevard, Pasadena 8, California. The returns for the periods here involved were filed with the Collector of Internal Revenue for the Sixth Collection District of California at Los Angeles.
2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on February 24, 1950.
3. The taxes in controversy are individual in-

come taxes for the calendar years 1944 and 1945, in the amounts of \$1,971.17 and \$10,604.04, respectively, or a total of \$12,575.21, for both years.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in asserting and deficiency in petitioner's income taxes for the taxable year 1944 at a time when he was barred from assessing such taxes by Section 275(a) of the Internal Revenue Code.

(b) The Commissioner erred in asserting any deficiency in petitioner's income taxes for the taxable year 1945 at a time when he was barred from assessing such taxes by Section 275(a) of the Internal Revenue Code.

(c) The Commissioner erred in determining there were omitted from the gross income reported in petitioner's Federal Income Tax Return for the taxable year 1944 items of income, properly includable in gross income for said year, in excess of twenty-five (25%) percent of the gross income reported in said return.

(d) The Commissioner erred in determining there were omitted from the gross income reported in petitioner's Federal Income Tax Return for the taxable year 1945 items of income, properly includable in gross income for said year, in excess of twenty-five (25%) percent of the gross income reported in said return.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner's Federal Income Tax Return for the taxable year 1944 was filed with the Collector at Los Angeles, California on or before March 15, 1945. A notice of deficiency (a copy of which is attached as Exhibit A hereto, dated February 24, 1950), was mailed to the taxpayer more than three years after said return was filed. Therefore, no assessment of the alleged deficiency in petitioner's income taxes for the year 1944 could then be made. The Commissioner is barred by the Period of Limitation upon assessment as provided in Section 275(a) of the Internal Revenue Code.

(b) Petitioner's Federal Income Tax Return for the taxable year 1945 was filed with the Collector at Los Angeles, California on or before March 15, 1946. A notice of deficiency (a copy of which is attached as Exhibit A hereto, dated February 24, 1950), was mailed to the taxpayer more than three years after said return was filed. Therefore, no assessment of the alleged deficiency in petitioner's income taxes for the year 1945 could then be made. The Commissioner is barred by the Period of Limitation upon Assessment as provided in Section 275(a) of the Internal Revenue Code.

(c) In petitioner's income tax return for the year 1944, petitioner reported all of his gross income for said year. There were not omitted from gross income items includible therein in excess of twenty-

five (25%) percent of the gross income as reported, as asserted by the Commissioner. No part of the petitioner's gross income was omitted from the said return. The provisions of Section 275(c) of the Internal Revenue Code are therefore inapplicable.

(d) In petitioner's income tax return for the year 1945, petitioner reported all of his gross income for said year. There were not omitted from gross income items includible therein in excess of twenty-five (25%) percent of the gross income as reported, as asserted by the Commissioner. No part of the petitioner's gross income was omitted from the said return. The provisions of Section 275(c) of the Internal Revenue Code are therefore inapplicable.

Wherefore, the petitioner prays that this Court hear the case and determine that there is no deficiency in petitioner's income taxes that is due or that may now be assessed for either of the taxable years involved in this proceeding.

/s/ JOHN I. BOLEN,
Counsel for Petitioner

State of California,
County of Los Angeles—ss.

L. Glenn Switzer, being first duly sworn, says that he is the petitioner above named: that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true.

/s/ L. GLENN SWITZER

Subscribed and sworn to before me this 12th day of May, 1950.

[Seal] /s/ LOUIS T. FLETCHER,
Notary Public in and for the County of Los Angeles, State of California.

EXHIBIT A

Treasury Department, Internal Revenue Service,
417 So. Hill St., Los Angeles 13, Calif.

Office of Internal Revenue Agent in Charge, Los Angeles Division—LA:IT:90D:LHP

Mr. L. Glenn Switzer Feb. 24, 1950
3464 E. Foothill Blvd., Pasadena 8, Calif.

Dear Mr. Switzer:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1944 and 1945 discloses a deficiency of \$12,575.21, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of the letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward

it to the Internal Revenue Agent in Charge, Los Angeles 13, California, for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner

/s/ By GEORGE D. MARTIN,
Internal Revenue Agent in Charge

Enclosures: Statement, Form of Waiver.

Statement

LA:IT:90D:LHP

Tax Liability for the Taxable Years Ended December 31, 1944 and 1945

Year	Deficiency
1944 Income tax	\$ 1,971.17
1945 Income tax	10,604.04
Total.....	\$12,575.21

This determination of your income tax liability has been made upon the basis of information on file in this office.

Inasmuch as there was omitted from the gross income reported in your returns for the taxable years 1944 and 1945 items of income, properly includible in gross income, in excess of 25 per centum of the gross income reported in your returns, the deficiency of income tax shown herein has been asserted in accordance with the provisions of section 275(c) of the Internal Revenue Code.

The following adjustments to the ordinary net income of the Transit Mixed Concrete Company, a partnership, for its taxable years ended December 31, 1944 and December 31, 1945, are based upon an audit made of the books of the partnership and result in an increase of your share thereof as shown below:

	1944	1945
Ordinary net income as disclosed by partnership return	\$13,936.73	\$15,332.71
Additional income:		
California-Portland Cement Co.—		
special discounts	6,082.29	19,265.66
Discounts not taken by customers.....	4,152.63	17,249.20
Sales tax omitted on invoices.....	20,864.23	36,776.34
Unidentified items	1,872.98	1,872.96
Corona Nov. Dec. sales omitted.....	17,298.31
Total	\$46,908.86	\$107,795.18
Nontaxable income:		
Hollywood cash sales entered twice.....	14,661.50	26,442.09
Ordinary net income adjusted.....	\$32,247.36	\$81,353.09
Your distributive share.....	\$21,498.23	\$54,235.40
Amount reportable in your separate return	\$10,749.11	\$27,117.70
Amount reported	4,645.58	5,110.91
Increase	\$ 6,103.53	\$22,006.79

ADJUSTMENTS TO INCOME

Taxable Year Ended December 31, 1944

Adjusted gross income as disclosed by return.....	\$ 4,645.58
Additional income:	
(a) Income from partnership increased.....	6,103.53
Adjusted gross income as corrected.....	\$10,749.11
Allowable deduction:	
(b) Standard deduction	500.00
Net income determined	\$10,249.11

EXPLANATION OF ADJUSTMENTS

- (a) This adjustment has been previously explained.
- (b) Your adjusted gross income, as corrected herein, is in excess of \$5,000.00 and your tax liability is therefore computed

under the provisions of sections 11 and 12 of the Internal Revenue Code, in lieu of section 400, as elected in your return. You are, however, allowed the standard deduction of \$500.00 provided in section 23(aa)(1) of the Internal Revenue Code.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1944

Net income determined	\$ 10,249.11
Less: Surtax exemption	500.00
Surtax Net income.....	\$ 9,749.11
Surtax	\$ 2,554.70
Net income determined	\$10,249.11
Less: Normal-tax exemption	500.00
Net income subject to normal tax.....	\$ 9,749.11
Normal tax at 3%.....	292.47
Correct income tax liability.....	\$ 2,847.17
Income tax liability shown on return, account No. 2410429	876.00
Deficiency of income tax.....	\$ 1,971.17

ADJUSTMENT TO NET INCOME

Taxable Year Ended December 31, 1945

Net income as disclosed by return.....	\$ 4,610.91
Additional income:	
(a) Income from partnership increased.....	22,006.79
Net income adjusted	\$26,617.70

EXPLANATION OF ADJUSTMENT

(a) This adjustment has been previously explained.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1945

Net income adjusted.....	\$26,617.70
Less: Surtax exemption	500.00
Surtax net income	\$26,117.70
Surtax	\$10,812.97
Net income adjusted.....	\$26,617.70

Less: Normal-tax exemption.....	500.00
Net income subject to normal tax.....	\$26,117.70
Normal tax at 3%	783.53
Correct income tax liability.....	\$11,596.50
Income tax liability shown on return. account No. 7644737	992.46
Deficiency of income tax.....	\$10,604.04

[Endorsed]: T.C.U.S. Filed May 15, 1950.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4(a) to (d), inclusive. Denies the allegations of error contained in subparagraphs (a) to (d), inclusive, of paragraph 4 of the petition.

5(a). Admits that the petitioner's Federal income tax return for the taxable year 1944 was filed with the Collector of Internal Revenue at Los Angeles, California, on March 15, 1945, and admits that the notice of deficiency was mailed to the petitioner on February 24, 1950; denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) Admits that the petitioner's Federal income tax return for the taxable year 1945 was filed on March 15, 1946, and admits that the notice of deficiency was mailed to the petitioner on February 24, 1950; denies the remaining allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) and (d). Denies the allegations contained in subparagraphs (c) and (d) of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

B. H. Neblett, Division Counsel.
E. C. Crouter, R. H. Kinderman, Special Attorneys, Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed July 3, 1950.

[Title of Tax Court and Cause.]

AMENDED ANSWER

The Commissioner of Internal Revenue, by his attorney, Mason B. Leming, Acting Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition. . . .

4(a) to (d), inclusive. Denies the allegations of error contained in subparagraphs (a) to (d), inclusive, of paragraph 4 of the petition.

5(a). Admits that the petitioner's Federal income tax return for the taxable year 1944 was filed with the Collector of Internal Revenue at Los Angeles, California, on March 15, 1945, and admits that the notice of deficiency was mailed to the petitioner on February 24, 1950; denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) Admits that the petitioner's Federal income tax return for the taxable year 1945 was filed on March 15, 1946, and admits that the notice of deficiency was mailed to the petitioner on February 24, 1950; denies the remaining allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) and (d). Denies the allegations contained in subparagraphs (c) and (d) of paragraph 5 of the petition.

6. Denies each and every allegation contained in

the petition not hereinbefore specifically admitted or denied.

Further answering, respondent alleges:

7. That the income tax returns filed by the petitioner for the years 1944 and 1945 reported net taxable income and taxes due in the following amounts:

	Reported Taxable Net Income	Reported Taxes Due
1944.....	\$4,645.58	\$876.00
1945.....	4,610.91	992.46

8. That the Commissioner of Internal Revenue erroneously determined the net taxable income and deficiency in taxes due from petitioner for the years 1944 and 1945 in a notice of deficiency dated February 24, 1950, to be:

	Net Taxable Income	Deficiency
1944.....	\$10,249.11	\$ 1,971.17
1945.....	26,617.70	10,604.04

9. That the correct net taxable income and deficiencies in taxes due from the petitioner for the years 1944 and 1945 are set forth below:

	Correct Net Taxable Income	Correct Deficiency
1944.....	\$10,975.26	\$ 2,258.86
1945.....	27,342.11	11,074.91

10. That, therefore, there are due and owing increased deficiencies from the petitioner for the years 1944 and 1945 which are hereby asserted and claimed in the following amounts:

	Increase in Deficiency
1944.....	\$287.69
1945.....	470.87

11. That during the years 1944 and 1945 petitioner received net taxable income in excess of the amounts set forth in paragraph 7, and which amounts he knowingly and fraudulently failed and refused to report, acknowledge, or disclose the taxes due thereon, and all the facts and information regarding the receipt of said unreported amounts of income, which said unreported amounts resulted in the correct net taxable income and deficiencies set forth in paragraph 9.

12. That, accordingly, there are due, and there are hereby claimed from the petitioner for the years 1944 and 1945, the deficiencies as set forth in paragraph 9, which include the increased deficiencies asserted and claimed in paragraph 10, and the 50% fraud penalties in the amounts as follows:

	50% Penalty
1944.....	\$1,029.53
1945.....	5,537.46

13. That the said income tax returns for 1944 and 1945 which were filed by the petitioner are false and fraudulent and were prepared and filed with intent to evade tax and, therefore, the said deficiencies referred to in paragraph 9 and paragraph 10 for the years 1944 and 1945 are due to fraud with intent to evade the true and correct taxes due from the petitioner for the said taxable years.

Wherefore, respondent prays that the Court determine the deficiencies and penalties involved

herein to be the amounts determined by the Commissioner.

/s/ MASON B. LEMING,
Acting Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

B. H. Neblett, Division Counsel.
R. E. Maiden, Jr., W. Lee McLane, Jr., Special
Attorneys, Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed January 15, 1952.

[Title of Tax Court and Cause.]

REPLY

The above named petitioner, in reply to the allegations set forth by the respondent in his amended answer, admits, denies and alleges as follows:

7. Admits the allegations contained in paragraph 7 of the amended answer.
8. Admits the allegations contained in paragraph 8 of the amended answer.
9. Admits the amount of correct net taxable income set forth in paragraph 9 of the amended answer, but denies the correctness of the deficiencies therein stated, and further denies that any deficiency is due from or owing by the petitioner for either of the years referred to.

10. Denies the allegations contained in paragraph 10 of the amended answer.

11. Admits that during the years 1944 and 1945 petitioner received net taxable income in excess of the amounts set forth in paragraph 7, and denies the remaining allegations contained in said paragraph 11.

12. Denies the allegations contained in paragraph 12 of the amended answer.

13. Denies the allegations contained in paragraph 13 of the amended answer.

In further reply to the amended answer, petitioner alleges:

14. That the facts alleged by respondent in his amended answer relating to fraud or intention to evade tax on the part of petitioner are erroneous; that there is no deficiency in tax due from petitioner for either of the years 1944 or 1945 since the assessment and/or collection of such deficiencies, if any, is barred by the period of limitations provided in Section 275(a) of the Internal Revenue Code; that the 50% fraud penalties asserted and claimed by respondent in his amended answer are not due from petitioner.

Wherefore, it is prayed that the affirmative relief requested by respondent in his amended answer be denied.

/s/ JOHN I. BOLEN,
Counsel for Petitioner.

[Endorsed]: T.C.U.S. Filed February 26, 1952.

[Title of Tax Court and Cause.]

AMENDMENT TO AMENDED ANSWER

The amended answer to the petition heretofore filed in the above-entitled proceeding is hereby amended by inserting immediately after paragraph 13, and before the prayer, the following allegations:

14. In event the Court should hold that the deficiencies for the taxable years are not due to fraud with the intent to evade tax, the respondent alleges that the deficiencies for the taxable years were and are due to negligence within the meaning of section 293(a) of the Internal Revenue Code and that there are, accordingly, due from the petitioner a 5% negligence penalty for the taxable year 1944 in the amount of \$112.94, and a 5% negligence penalty for the taxable year 1945 in the amount of \$553.74, for which claim is hereby asserted and made.

/s/ MASON B. LEMING,

Acting Chief Counsel.

Bureau of Internal Revenue.

Of Counsel:

B. H. Neblett, District Counsel.

R. E. Maiden, Jr., Special Attorneys, Bureau
of Internal Revenue.

[Endorsed]: T.C.U.S. Filed April 4, 1952.

[Title of Tax Court and Cause.]

REPLY TO AMENDMENT TO AMENDED ANSWER

The above named petitioner, in reply to the allegations set forth by the Respondent in his Amendment to Amended Answer, admits, denies and alleges as follows:

14. Denies the allegations contained in paragraph 14, which paragraph is added to the Amended Answer by the Amendment to Amended Answer.

Wherefore, it is prayed that the affirmative relief requested by Respondent in his Amendment to Amended Answer be denied.

/s/ WILLIAM A. CRUIKSHANK, JR.,
Counsel for Petitioner.

Of Counsel:

John I. Bolen, Louis T. Fletcher, Esq., Owen E. O'Neil, Esq.

[Endorsed]: T.C.U.S. Filed April 18, 1952.

[Title of Tax Court and Causes.]

FINDINGS OF FACT AND OPINION

L. Glenn Switzer, et al.¹ Petitioners, vs. Commissioner of Internal Revenue, Respondent. Docket Nos. 28256, 28257, 28258, 28259. Promulgated June 30, 1953.

Petitioners, L. Glenn Switzer and Howard A. Switzer, were partners in the Transit Mixed Concrete Company during 1944 and 1945. Petitioner, Ida H. Switzer, is the wife of L. Glenn Switzer; and petitioner, Florence M. Switzer, is the wife of Howard A. Switzer. One-half of each husband's partnership interest constituted community property of said spouses under California law. A partnership return of income for each of the years 1944 and 1945 was filed on or before March 15, 1945, and March 15, 1946, respectively. Individual income tax returns were filed by each of the four petitioners for each of the years 1944 and 1945 on or before the 15th day of March following such year. The respondent determined deficiencies and a five per cent negligence penalty under section 293(a) against all four petitioners, and asserted fraud penalties for both years against the two husbands.

1. Held, no part of any of the deficiencies for either of the taxable years determined with respect

¹ Proceedings of the following petitioners are consolidated herewith: Petitioners: Ida H. Switzer, Docket No. 28257; Howard A. Switzer, Docket No. 28258; Florence M. Switzer, Docket No. 28259.

to the two husbands was due to fraud with intent to evade tax.

2. Held, further, no part of any of the deficiencies for either of the taxable years determined against the wives was due to negligence.

3. Held, further, part of the deficiencies for each of the taxable years determined against the husbands was due to negligence.

4. Held, further, each of the petitioners for each of the taxable years omitted gross income in excess of 25 per cent of the gross income stated in his or her respective return, and the deficiencies was timely asserted within the five-year period provided by section 275(c) of the Code.

William A. Cruikshank, Jr., Esq., for the petitioners.

R. E. Maiden, Jr., Esq., for the respondent.

These consolidated proceedings involve Federal income tax deficiencies and penalties for the calendar years 1944 and 1945 as follows:

Petitioner	Year	Deficiency*	50% Penalty	5% Penalty**
L. Glenn Switzer	1944	\$ 2,258.86	\$1,029.53	\$112.94
	1945	11,074.91	5,537.46	553.74
Ida H. Switzer	1944	2,258.86		112.94
	1945	11,074.91		553.74
Howard A. Switzer	1944	809.91	404.96	40.49
	1945	3,768.68	1,884.34	188.43
Florence M. Switzer	1944	779.91		38.99
	1945	3,653.68		186.69

* Includes claimed increased deficiencies.

** Negligence penalty asserted in Docket Nos. 28256 and 28258, in event Court should hold fraud not established.

The questions to be decided are: (1) whether a

part of each deficiency for each taxable year in Docket Nos. 28256 and 28258 is due to fraud with intent to evade tax; (2) if no part of the deficiencies is due to fraud with intent to evade tax, is a part of each deficiency for each taxable year in said Dockets due to negligence within the meaning of section 293(a); (3) whether a part of each deficiency for each taxable year in Docket Nos. 28257 and 28259 is due to negligence within the meaning of section 293(a); and (4) whether the five-year period of limitations is available to the respondent under section 275(c) by reason of the omission of gross income in excess of 25 per cent of the gross income stated in each return.

The five per cent addition to the tax under section 293(a) was plead affirmatively by the respondent in amendments to his answers. In Docket Nos. 28256 and 28258, it was an alternative plea to the allegation of fraud. The statutory period for assessment was not extended by any waivers.

Some of the facts were stipulated.

Findings of Fact

The stipulated facts are so found and are incorporated herein.

The petitioners, L. Glenn Switzer and Howard A. Switzer, were partners during the years 1944 and 1945, carrying on their partnership business under the firm name of Transit Mixed Concrete Company, in Pasadena, California. The interests of said L. Glenn Switzer and Howard A. Switzer

in that partnership were two-thirds and one-third, respectively.

During said years L. Glenn Switzer was married to Ida H. Switzer; said two-thirds partnership interest constituted the community property of said spouses under the laws of the State of California. During said years Howard A. Switzer was married to Florence M. Switzer; said one-third partnership interest constituted the community property of said spouses under the laws of the State of California.

All of the income of the petitioners during the years 1944 and 1945 was derived from said partnership, Transit Mixed Concrete Company.

A partnership return of income for each of the years 1944 and 1945 was filed on or before March 15, 1945, and March 15, 1946, respectively. Individual income tax returns were filed by each of the four petitioners for each of the years 1944 and 1945 on or before the 15th day of March following such year. The notice of deficiency in each proceeding, covering both taxable years, was mailed on February 24, 1950. The respective deficiencies were, therefore, determined and asserted beyond three but within five years after the respective returns were filed.

The income of said partnership, as reported on the partnership returns and as corrected, is as follows:

Year	Reported	Corrected	Reported	Corrected
	Gross	Gross	Net	Net
1944	\$384,905.04	\$405,394.12	\$13,936.73	\$34,425.81
1945	526,068.71	594,262.31	15,332.71	83,526.31

The gross receipts of the partnership, as reported

and as corrected, together with the amount omitted expressed as a percentage, are as follows:

Year	Reported	Corrected	Percentage
			Omitted
1944.....	\$1,271,448.34	\$1,291,937.40	1.5%
1945.....	1,729,486.97	1,797,680.57	3.9%

Each petitioner's share of net partnership income, as reported and as corrected, is as follows:

	1944		1945	
	Reported	Corrected	Reported	Corrected
L. Glenn Switzer	\$4,645.58	\$11,475.26	\$5,110.91	\$27,842.11
Ida H. Switzer	4,645.58	11,475.27	5,110.91	27,842.11
Howard A. Switzer	2,322.79	5,737.63	2,555.45	13,921.05
Florence M. Switzer	2,322.78	5,737.63	2,555.45	13,921.05

The following deficiencies are due in the event that the Court holds that the assessment of such deficiencies, or any of them, is not barred by the statute of limitations:

	1944	1945
L. Glenn Switzer.....	\$2,258.86	\$11,074.91
Ida H. Switzer	2,258.86	11,074.91
Howard A. Switzer	809.91	3,768.68
Florence M. Switzer	779.91	3,653.68

The statutory notices issued to petitioners, Howard A. Switzer, Docket No. 28258, and L. Glenn Switzer, Docket No. 28256, contained the following determination of the additional income giving rise to the deficiencies:

The following adjustments to the ordinary net income of the Transit Mixed Concrete Company, a partnership, for its taxable years ended December 31, 1944 and December 31, 1945, are based upon an audit made of the books of the partnership * * * as shown below:

	1944	1945
Ordinary net income as disclosed by		
partnership return	\$13,936.73	\$ 15,332.71
Additional income:		
California-Portland Cement Co.—		
special discounts	6,082.29	19,265.66
Discounts not taken by customers.....	4,152.63	17,249.20
Sales tax omitted on invoices.....	20,864.23	36,776.34
Unidentified items	1,872.98	1,872.96
Corona Nov. Dec. sales omitted.....	17,298.31
Total.....	\$46,908.86	\$107,795.18
Nontaxable income:		
Hollywood cash sales entered twice.....	14,661.50	26,442.09

Ordinary net income adjusted..... \$32,247.36 \$ 81,353.09

Each of the petitioners and the individual who prepared the returns of the partnership and of the petitioners for each of the taxable years were either present in the courtroom at the time of the hearing of these proceedings, or else were available on call, in response to subpoenas issued at the request of the respondent. Neither the respondent nor the petitioners called any of said parties as a witness. All of the books and records of the partnership were in the courtroom and available as evidence, but were not offered in evidence by any of the parties.

The respondent offered a short stipulation of facts and the deficiency notices in evidence, together with the partnership returns and the petitioners' individual returns for the taxable years, and rested. The petitioners also rested without offering any further evidence.

No part of any of the deficiencies for either of the taxable years determined against the husbands was due to fraud with intent to evade tax.

No part of any of the deficiencies for either of the taxable years determined against the wives was due to negligence within the purview of section 293(a) of the Internal Revenue Code.

Part of the deficiencies for each of the taxable years determined against the husbands was due to negligence within the purview of section 293(a) of the Internal Revenue Code.

Each of the petitioners for each of the taxable years omitted gross income in excess of 25 per cent of the amount of gross income stated in his or her respective income tax return, and the deficiencies were timely asserted within the five-year period provided by section 275(c) of the Internal Revenue Code.

Opinion

Rice, Judge: In amended answers the respondent asserted fraud penalties against L. Glenn Switzer and Howard A. Switzer, but not against their wives. The wives were not partners in the business but merely had a community interest in the income therefrom.

The respondent argues that for the taxable years 1944 and 1945 the net distributable income of the business was \$34,425.81 and \$83,526.31, respectively; and that since petitioners and their wives, in the aggregate, reported only \$13,936.73 on their 1944 returns and \$15,322.72 on their 1945 returns, they understated the income from their business by \$20,489.08 for 1944 and \$68,203.59 for 1945; and that, expressed in percentages, each of the petitioners failed to account for his or her true in-

come in 1944 by 147.01 per cent and in 1945 by 444.01 per cent. He states that, even in the face of a charge of fraud, the two brothers chose to remain silent and to let go wholly unexplained the reasons for such gross discrepancies between their real and their reported income for two straight years.

He points out that the additions determined in the deficiency notices represent an understatement of discounts received in the amounts of \$6,082.29 in 1944 and \$19,265.66 in 1945; an overstatement of discounts taken by customers in the amounts of \$4,152.63 in 1944 and \$17,249.20 in 1945; the omission of sales in 1945 to the extent of \$17,298.31; sales' taxes that had not been included in invoices and, consequently, not in sales, resulting in an understatement in 1944 of \$20,864.23 and in 1945 of \$36,776.34; and other minor omissions of unidentified items in both years.

He contends that the courts have consistently held that the unsatisfactory accounting, or no accounting, for omissions of income in consecutive years in excess of 100 per cent of true income is sufficient proof of fraudulent intent to sustain the 50 per cent penalty of section 293(b),¹ citing Rogers

¹ Sec. 293. Additions to the Tax in Case of Deficiency. * * * * *

(b) Fraud.—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612(d)(2).

vs. Commissioner, 111 F. 2d 987 (C. A. 6, 1940); Arlette Coat Company, 14 T. C. 751 (1950); and a Memorandum Opinion of this Court. He concludes by arguing that it is unreasonable that the two brothers should have honestly believed that their business had profited in two tax years only to the extent of \$39,259.44 when the actual profits of the business were \$117,952.12, and that the only conclusion to be drawn, in the absence of any explanation from petitioners, is that petitioners were aware that they were not reporting their true income and intended to evade their correct tax liabilities.

The cases cited by respondent for the proposition that "omissions of income in consecutive years in excess of 100% of true income is sufficient proof of fraudulent intent to sustain the 50% penalty" do not so hold. The holdings in those cases are based on the entire record and not on the omission of income alone. In addition, such cases are distinguishable on their facts. It appears from the deficiency notices in this case that there were errors which resulted from large overstatements of income as well as large understatements.

The burden of proof in fraud cases is, of course, upon the respondent. It must be clear and convincing proof. Evidence of inefficiency and ignorance of accounting methods are not sufficient to establish fraud. Walter M. Ferguson, Jr., 14 T. C. 846 (1950); W. F. Shawver Co., 20 B. T. A. 723 (1930). Here, we are not even advised that there was inefficiency or ignorance. We are shown merely that

there was a large understatement of income, and, on that showing the respondent rests his case. That is not enough to carry his burden of proof to establish fraud. The Commissioner cannot sustain his burden of proof on a fraud issue by statements made in his notice of deficiency. Oscar G. Joseph, 32 B. T. A. 1192, 1204 (1935). That fraud is not established by the mere understatement of taxable income is shown by our holding in James Nicholson, 32 B. T. A. 977, 989 (1935), affd. 90 F. 2d 978 (C. A. 8, 1937), where we said:

* * * Here fraud is not admitted. The mere fact that his return showed a net income for the taxable year 1929 in the sum of \$40,424.66 and the respondent, in recomputing his tax liability, determined that the net income for that year was \$73,435.38, by itself, does not establish fraud. If it did, then all taxpayers against whom deficiencies are determined would be guilty of fraud and subject to the imposition of a fraud penalty.

Fraud implies bad faith, intentional wrong-doing, and a sinister motive. It is never imputed or presumed. Mere suspicion of fraud and mere doubts as to the intentions of the taxpayer are not sufficient proof of fraud. Sharpsville Boiler Works Co., 3 B. T. A. 568 (1925); J. William Schultze, 18 B. T. A. 444 (1929); Arthur M. Godwin, 34 B. T. A. 485 (1936); Arthur S. Barnes, 36 B. T. A. 764 (1937); Nicholas Roerich, 38 B. T. A. 567 (1938), affd. 115 F. 2d 39 (C. A. D. C., 1940), certiorari denied 312 U. S. 700 (1941); L. Schepp Co., 25 B. T. A. 419 (1932).

Respondent's amendments to his answers in this case allege no facts in support of the fraud charge except that petitioners received net taxable income in excess of the amount set forth, and respondent's conclusion that the petitioners knowingly and fraudulently failed to report such amounts.

Reading between the lines of the record made in this case could lead one to a number of conclusions as to why the understatement of income occurred. We are not, however, permitted to speculate. The burden is that of the respondent, and he has failed to sustain it. The reports are replete with cases where the Commissioner has offered a considerable amount of evidence other than the deficiency notice and the returns to sustain his burden of proving fraud but has fallen short thereof. The witnesses subpoenaed by the respondent were in the courtroom at the hearing of these proceedings or were available on short notice. They included the petitioners and the bookkeeper who prepared the returns, but they were not called as witnesses. The books and records of the partnership were also in the courtroom, but they were not offered in evidence either. To hold that there was fraud with intent to evade taxes under these facts would be tantamount to a holding that fraud may be presumed. See Henry S. Kerbaugh, 29 B. T. A. 1014 (1934), affd. 74 F. 2d 749 (C. A. 1, 1935). We, therefore, hold for petitioners on this issue.

The respondent, by amendments to the answers, affirmatively alleged that a part of each deficiency for each taxable year in the case of each petitioner

was due to negligence, and that, therefore, the five per cent addition to the tax provided by section 293(a)² is applicable.

As to the two wives, it is stipulated that their interest in the partnership income arises from the community property law of the State of California. Under that law, the management and control of the community property is vested in the husband.³ The record does not show that the wives participated in any way in the business of the partnership, in the management of its affairs, in the accounting of the income produced therefrom, or in the preparation of the returns. We, therefore, conclude that as to the wives, the respondent has not sustained his burden of proof; and the five per cent addition to the tax may not be asserted against them. See Harold B. Franklin, 34 B. T. A. 927, 941-942 (1936).

With respect to the two husbands, the record shows that they understated their income in 1944

² Sec. 293. Additions to the Tax in Case of Deficiency. * * * * *

(a) Negligence.—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 272(i), relating to the prorating of a deficiency, and of section 292, relating to interest on deficiencies, shall not be applicable.

³ Sec. 172, Civil Code of California.

by 147.01 per cent and in 1945 by 444.01 per cent. The deficiency notices show numerous adjustments in large amounts to the net income of the partnership. Such large discrepancies between real net income and reported income and numerous adjustments are strong evidence of negligence and, in our opinion, are sufficient to establish a *prima facie* case shifting the burden of going forward with the evidence to these petitioners. See Morrisdale Coal Mining Co., 13 T. C. 448 (1949); Estate of L. E. McKnight, 8 T. C. 871 (1947); Robinette vs. Commissioner of Internal Revenue, 139 F. 2d 285 (C. A. 6, 1943), certiorari denied 322 U. S. 745 (1944); B. F. Edwards, 39 B. T. A. 735 (1939); Commissioner of Internal Revenue vs. Renyx, 66 F. 2d 260 (C. A. 2, 1933); C. A. Hutton, 21 B. T. A. 101 (1930), affd. 59 F. 2d 66 (C. A. 9, 1932). No explanation for such large discrepancies between actual and reported income were offered to the Court, and the only fair inference on this record is that the adjustments were necessary primarily because these petitioners were negligent in keeping their accounts and rendering their returns, and that the deficiencies, in part, resulted from their negligence. It, therefore, follows that the five per cent addition to the tax against these petitioners must be upheld. See Watson-Moore, 30 B. T. A. 1197 (1934).

Section 275(c) of the Internal Revenue Code provides that if the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross

income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed. The deficiencies in this case were determined and asserted beyond three but within five years after the respective returns were filed.

The petitioners argue that a partner's gross income is his proportionate share of partnership gross income; or, stated another way, that for the purposes of section 275(c) the gross income of a partner is his share of partnership gross income, and not his share of partnership net income. They contend that, under this concept, L. Glenn Switzer and his wife, for example, should be considered the owners and operators of 75 per cent of the partnership business as if it were a separate business operated by them as a sole proprietorship. They state that, if that is correct, their gross income would be total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. On this basis, they argue that the omissions in each of these proceedings and for each of the years do not exceed 25 per cent of the gross income reported.

They also argue that this partnership gross income is "stated in the return"; that it is presented in the manner and on the forms prescribed by the Code and the Commissioner's regulations; that the partnership returns, as informational returns for administrative convenience, disclose data incorporated into the individual returns by reference; that

these data are stated in the individual returns as surely as information contained on Schedule "C" of Form 1040 which is set forth on a separate unattached schedule, furnished by the Commissioner and adopted by him, since 1951, for the sake of convenience, citing Maurice H. Van Bergh, 18 T. C. 518 (1925), on appeal C. A. 2, February 6, 1953; and that, since the basis of taxing the income of partnership operations requires that the partner be treated as if he were a sole proprietor to the extent of his share of the business, except in a few situations covered expressly by statute, there seems to be no justification for applying section 275(c) differently to a partner than to a sole proprietor.

Section 182 of the Code charges to each partner his distributive share of the net income or capital gain of the partnership. That income is required to be reported by each partner on his individual return and is necessarily a part of all of his income which must be included under the broad, general definition of gross income contained in section 22 of the Code. If the petitioners' argument is correct, an anomalous situation would present itself in a case where a partnership has gross income but sustains a net loss for the year. If a partner in such partnership had gross income from other sources which he reported but failed to include therein his proportionate share of the partnership gross income, and such omission resulted in an omission in excess of 25 per cent of the amount of gross income stated in his return, petitioners' argument

would require a holding that section 275(c) applied. Merely to state such a proposition shows the fallacy of petitioners' argument.

In *Anna Eliza Masterson*, 1 T. C. 315 (1942), reversed on other grounds 141 F. 2d 391 (C. A. 5, 1944), we had occasion to construe section 275(c) in connection with an omission in excess of 25 per cent of gross income shown on a taxpayer's individual return and an estate return in which the taxpayer showed the balance of her income, which should have been reported in her individual return. We there said at page 324:

That section is explicit in its reference to "the taxpayer." The "gross income" from which an omission brings the section into play must be the gross income of that taxpayer and "the return" referred to must be his return. If the provision were to be construed so that an omission from one taxpayer's return would be without effect upon a showing that the unreported income was contained in the return of some other taxpayer, its effect would be largely nullified. In other words, it does not comport with the purpose or language of the statute to say that the gross income shown on the return of another taxpayer is the same as "the gross income" of "the taxpayer."

The petitioners also cite Treasury Regulations 111, section 29.422-2, interpreting section 422(a) of the Code relating to "Unrelated Business Net Income" of exempt organizations; and a 1949 Bureau ruling under section 251 of the Code relating to "Income from Sources Within Possessions of the

United States", C. B. 1949-2, I. T. 3981. We have carefully considered both authorities, which deal with special provisions of the Code, and are of the opinion that they do not help in solving the problem presented here.

We, therefore, hold that the net income of the partnership distributable to petitioners is a part of their gross income for purposes of section 275(c), and the deficiencies were timely asserted.

Decision will be entered under Rule 50.

The Tax Court of the United States
Washington

Docket No. 28256

L. GLENN SWITZER, Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of this Court as set forth in its Findings of Fact and Opinion promulgated June 30, 1953, the respondent filed his computation for entry of decision on September 30, 1953. Petitioner having noted his acquiescence therein, it is

Ordered and Decided: That there are deficiencies

in income tax and penalties as set forth below:

Year	Deficiency	50%	5% Negligence
1944.....	\$ 2,258.86	None	\$112.94
1945.....	\$11,074.91	None	\$553.75

[Seal] /s/ STEPHEN E. RICE,
 Judge

Entered: October 5, 1953.

Served: October 5, 1953.

The Tax Court of the United States
Washington

Docket No. 28257

IDA H. SWITZER, Petitioner,
 vs.

COMMISSIONER OF INTERNAL REVENUE,
 Respondent.

DECISION

Pursuant to the determination of this Court as set forth in its Findings of Fact and Opinion promulgated June 30, 1953, the respondent filed his computation for entry of decision on September 30, 1953. Petitioner having noted her acquiescence therein, it is

Ordered and Decided: That there are deficiencies in income tax for the taxable years 1944 and 1945

in the respective amounts of \$2,258.86 and \$11,-074.91, and no penalties.

[Seal] /s/ STEPHEN E. RICE,
 Judge

Entered: October 5, 1953.

Served: October 5, 1953.

The Tax Court of the United States
Washington

Docket No. 28258

HOWARD A. SWITZER, Petitioner,
 vs.

COMMISSIONER OF INTERNAL REVENUE,
 Respondent.

DECISION

Pursuant to the determination of this Court as set forth in its Findings of Fact and Opinion promulgated June 30, 1953, the respondent filed his computation for entry of decision on September 30, 1953. Petitioner having noted his acquiescence therein, it is

Ordered and Decided: That there are deficiencies in income tax and penalties as set forth below:

Year	Deficiency	50% Penalty	5% Negligence Penalty
1944.....	\$ 809.91	None	\$ 40.49
1945.....	\$3,768.68	None	\$188.43

[Seal] /s/ STEPHEN E. RICE,
 Judge

Entered: October 5, 1953.

Served: October 5, 1953.

The Tax Court of the United States
Washington

Docket No. 28259

FLORENCE M. SWITZER, Petitioner,
vs.COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of this Court as set forth in its Findings of Fact and Opinion promulgated June 30, 1953, the respondent filed his computation for entry of decision on September 30, 1953. Petitioner having noted her acquiescence therein, it is

Ordered and Decided: That there are deficiencies in income tax for the taxable years 1944 and 1945 in the respective amounts of \$779.91 and \$3,653.68, and no penalties.

[Seal] /s/ STEPHEN E. RICE,
Judge

Entered: October 5, 1953.

Served: October 5, 1953.

[Title of Tax Court and Causes 28256-7-8-9.]

STIPULATION OF FACTS

The petitioners hereto, by their respective counsel, hereby stipulate and agree that the following facts may be found as true:

1. The petitioners, L. Glenn Switzer and Howard A. Switzer, were partners during the years 1944 and 1945, carrying on their partnership business under the firm name of Transit Mixed Concrete Company, in the City of Pasadena, County of Los Angeles, State of California. The interests of said L. Glenn Switzer and Howard A. Switzer in that partnership were two-thirds and one-third, respectively.
2. During said years L. Glenn Switzer was married to Ida H. Switzer; said two-thirds partnership interest constituted the community property of said spouses under the laws of the State of California. During said years Howard A. Switzer was married to Florence M. Switzer; said one-third partnership interest constituted the community property of said spouses under the laws of the State of California.
3. All of the income of the petitioners during the years 1944 and 1945 was derived from said partnership, Transit Mixed Concrete Company.
4. A Partnership Return of Income (Form 1065) for each of the years 1944 and 1945 was filed on or before March 15, 1945 and March 15, 1946, respectively. Individual Income Tax Returns (Form 1040) were filed by each of the four petitioners for each of the years 1944 and 1945 on or before the 15th day of March following such year.
5. The income of said partnership, as reported on the partnership returns and as corrected, is as follows:

Year	Reported	Corrected	Reported	Corrected
	Gross	Gross	Net	Net
1944	\$384,905.04	\$405,394.12	\$13,936.73	\$34,425.81
1945	526,068.71	594,262.31	15,332.71	83,526.31

The reported business receipts of said partnership for the years 1944 and 1945 were \$1,271,448.34 and \$1,729,486.97, respectively.

6. Each petitioner's share of net partnership income, as reported and as corrected, is as follows:

	1944		1945	
	Reported	Corrected	Reported	Corrected
L. Glenn Switzer	\$4,645.58	\$11,475.26	\$5,110.91	\$27,842.11
Ida H. Switzer	4,645.58	11,475.27	5,110.91	27,842.11
Howard A. Switzer	2,322.79	5,737.63	2,555.45	13,921.05
Florence M. Switzer	2,322.78	5,737.63	2,555.45	13,921.05

7. The following deficiencies are due in the event that the Court holds that the assessment of such deficiencies, or any of them, is not barred by the statute of limitations:

	1944	1945
L. Glenn Switzer.....	\$2,258.86	\$11,074.91
Ida H. Switzer	2,258.86	11,074.91
Howard A. Switzer.....	809.91	3,768.68
Florence M. Switzer.....	779.91	3,653.68

Dated: April 16, 1952.

/s/ WILLIAM A. CRUIKSHANK, JR.,
Counsel for Petitioner

/s/ MASON B. LEMING,

Acting Chief Counsel, Bureau of Internal Revenue,
Counsel for Respondent

[Endorsed]: T.C.U.S. Filed April 17, 1952.

[Title of Tax Court and Causes 28256-7-8-9.]

TRANSCRIPT OF PROCEEDINGS

Court Room No. 1602, United States Post Office
and Court House Building, Los Angeles, Calif.,
April 17, 1952, 10:15 a.m.

(Met pursuant to notice.)

Before: Honorable Stephen E. Rice, Judge.

Appearances: Alva C. Baird and William A. Cruikshank, Jr., 458 So. Spring St., Los Angeles, Calif., appearing for the Petitioners. R. E. Maiden, Jr., (Honorable Mason B. Leming, Acting Chief Counsel, Bureau of Internal Revenue), appearing for the Respondent.

The Court: Call the Switzer case.

The Clerk: 28256, L. Glenn Switzer; 28257, Ida H. Switzer; 28258, Howard A. Switzer, and 28259, Florence M. Switzer.

Mr. Cruikshank: William A. Cruikshank, Jr., for the Petitioners.

Mr. Maiden: R. E. Maiden, Jr., for the Respondent.

The Clerk: Pardon me, but are you enrolled to practice?

Mr. Cruikshank: We filed our entry last month, Mr. Baird and I. There are also others that have previously done so.

I would like to make a motion at this time that these four cases be consolidated for hearing, trial and briefs.

Mr. Maiden: No objection.

The Court: The motion is granted.

Mr. Cruikshank: I believe we have one other matter that I mentioned at the calling of the calendar last Monday, and that is our objection to a motion that was filed by the Respondent in each of these cases for leave to file an amendment to his amended Answer.

The Court: That motion was granted in Washington. Didn't you get a copy?

Mr. Cruikshank: We received a copy of it just this week. We would like to ask the Court to vacate that order and reconsider, in view of the history of the pleadings developed in this case and the Respondent's method of preparing the case. There has been nothing new arising in the case for—the statutory notice was issued more than two years ago. The statutory notice was based entirely upon the Revenue Agent's report, which was two years and ten months ago. There has been no new development in the case, and yet the Respondent has amended his Answer in January of this year, which necessitated the postponement of a previous trial setting, and in that amendment he raised fraud.

Now, less than a week before this hearing he amended his Answer again, or makes an amendment to his Amended Answer to raise negligence. We believe that it is unfair to the Petitioners, and that the rather piecemeal prolonged approach that the Respondent is taking in these cases should not be approved by the Court.

Mr. Maiden: If the Court please, I think quite obviously counsel's motion should be denied. The

nature of this amendment asserting the negligence penalty is the type of amendment that is commonly made and is properly made, even after the conclusion of the hearing in a case where the Petitioner even had no notice of it, and I think, as I say, the motion was sent in on April 1st, and I am pretty sure that I advised counsel some week or ten days ago of the motion, and it is something, it is the type of an amendment that follows the proof in the case, and, as I say, is one that is proper to be made and considered and allowed after the evidence has been adduced, in order to conform with the proof.

The Court: The motion is denied.

Mr. Cruikshank: I believe in these cases we have a stipulation which I would ask the Government counsel to file at this time.

Mr. Maiden: At this time, if the Court please, I file a stipulation of facts in the case. I should like to state to the Court the nature of the issues involved and the substance of the stipulation of facts.

The Court: Are you making an opening statement now?

Mr. Maiden: Do you want to make your statement?

Opening Statement on Behalf of the Petitioners
By Mr. Cruikshank:

Mr. Cruikshank: In this case, your Honor, in view of the stipulation, the Respondent has the burden of proof in all respects. We stipulate cer-

tain deficiencies are due if the assessment is not barred by the statute of limitations. Respondent urges the fraud penalty and has affirmatively pleaded in the Amended Answer the negligence penalty.

Opening Statement on Behalf of the Respondent
By Mr. Maiden:

Mr. Maiden: If the Court please, as Mr. Cruikshank said, the only two issues in this case are whether or not the assessment of the deficiencies, as determined in the Answer of the Respondent, in which increased deficiencies were asserted, were assessed within the statutory period. That turns upon Section 275 (c) of the Internal Revenue Code, which provides a five-year period of limitations, in the event the taxpayer omitted from income amounts, gross income amounts, proper includable income, gross income, in excess of the 25 per cent of the amount of gross income reported on the return, and the Respondent's position is that the stipulation of facts in this case show that each of the Petitioners failed to report more than 25 per cent of amounts includable in gross income in excess of the amounts of gross income reported in the income, so that the period of limitation is five years rather than the three-year period, and the statutory notices were issued within the five-year period. That presents really a question of law only. The facts are not in dispute.

The other issue is a factual issue entirely, and that is the question of whether or not any part of

the deficiencies which are agreed to in this case, provided they are not barred by the statute of limitations, were due to fraud with the intent to evade taxes. The statutory notices, if the Court please, set forth in particularity the amounts and types of unreported income which gives rise to the deficiencies. The pleadings do not contest any of those items, but simply places in issue the bar of the statute.

The stipulation of facts in the case sets forth the amount of gross income that was reported on the partnership return. I might state to the Court in this connection that Mr. L. Glenn Switzer and Mr. Howard Switzer operated a partnership, and Mr. Glenn Switzer having a two-thirds interest, and Mr. Howard Switzer, a one-third interest. And, as I stated, the stipulation shows the amount of gross income for each of the years reported on the partnership return of income, the correct amount of gross income for those years, and the reported and correct amount of income, and that same information is given as to the individuals.

The stipulation shows, if the Court please, that for the year 1944 the partnership return reported net income, net distributable income, to the partnership, of \$13,936.73. And it is stipulated that the correct net income of the partnership for that year was \$34,425.81.

For 1945 it is stipulated that the partnership return showed a net distributable income of \$15,332.71, and that the correct net income of the partnership for that year was \$83,426.31.

And in the case of the individuals, L. Glenn Switzer, for 1944, it shows that the Petitioner's share of the net partnership income was \$4,645.58. That is on the community property basis. You would have to consider his wife, Ida H. Switzer, who also reported on her return, \$4,645.58. The total of those two would be about five thousand two hundred eighty some odd dollars reported. The correct amount of their net distributable income from the partnership was about twenty-two thousand plus.

For 1945 Mr. Glenn Switzer and his wife reported approximately \$10,200.00, whereas it is stipulated that the correct net income was about \$51,000.00.

In 1944 Howard A. Switzer and his wife reported approximately \$4,600.00, and it is stipulated that their correct net distributable income from the partnership was about \$11,000.00.

In 1945 Howard and his wife reported about five thousand plus, and it is stipulated that their correct net income was about \$27,000.00.

Now then, if the Court please, based upon—at this time I want to offer in evidence as Respondent's exhibits the returns involved in this case. I should like to offer first, as Respondent's Exhibit A, the partnership return of the Transit Mixed Concrete Company for the taxable year 1944.

The Clerk: Exhibit A.

The Court: It may be received.

(The document above referred to was received in evidence and marked Respondent's Exhibit No. A.)

[See pages 69-72.]

Mr. Maiden: And as Respondent's Exhibit B, the partnership return for the taxable year 1945 for the Transit Mixed Concrete Company.

The Clerk: Exhibit B.

The Court: It may be received.

(The document above referred to was received in evidence and marked Respondent's Exhibit B.)

[See pages 73-77.]

Mr. Maiden: And I would like to offer in evidence as Respondent's Exhibit C the 1944 individual income tax return of Ida H. Switzer.

The Clerk: Exhibit C.

The Court: It may be received.

(The document above referred to was received in evidence and marked Respondent's Exhibit C.)

Mr. Maiden: And as Respondent's Exhibit D, I offer the individual income tax return for 1945 of Ida H. Switzer.

The Clerk: Exhibit D.

The Court: It may be received.

(The document above referred to was received in evidence and marked Respondent's Exhibit D.)

Mr. Maiden: I offer the individual income tax return of Florence Switzer for 1944 as Exhibit E.

The Clerk: Exhibit E.

The Court: It may be received.

(The document above referred to was received in evidence and marked Respondent's Exhibit E.)

Mr. Maiden: And as Respondent's Exhibit F, the individual tax return for 1945 of Florence Switzer.

The Clerk: Exhibit F.

The Court: It may be received.

(The document above referred to was received in evidence and marked Respondent's Exhibit F.)

Mr. Maiden: As Respondent's Exhibit G, I offer in evidence the 1944 individual income tax return of Howard A. Switzer.

The Clerk: Exhibit G.

The Court: It may be received.

(The document above referred to was received in evidence and marked Respondent's Exhibit G.)

Mr. Maiden: As Respondent's Exhibit H, I offer in evidence the 1945 individual income tax return of Howard A. Switzer.

The Clerk: Exhibit H.

The Court: It may be received.

(The document above referred to was received in evidence and marked Respondent's Exhibit H.)

Mr. Maiden: As Respondent's Exhibit I, I offer in evidence the individual income tax return for 1945 of L. Glenn Switzer.

The Clerk: Exhibit I.

The Court: It may be received.

(The document above referred to was received in evidence and marked Respondent's Exhibit I.)

[See page 78.]

Mr. Maiden: As Respondent's Exhibit J, I offer in evidence the 1945 individual income return of L. Glenn Switzer.

The Clerk: Exhibit J.

The Court: It may be received.

(The document above referred to was received in evidence and marked Respondent's Exhibit J.)

[See page 79.]

Mr. Maiden: Now, if the Court please, I should like to have marked in evidence, simply for the purpose of showing as proof of the characterization and amounts of unreported income, simply for that purpose, the statutory notice in each of the cases.

Mr. Cruikshank: I would object to that, your Honor. The Revenue Agent or whoever prepared those statutory notices is not here. I would ask that he be called to the stand to testify.

The Court: Are these statutory notices of deficiency?

Mr. Maiden: They are attached to the Petitions. They are not in evidence, of course, but it is the practice of the Court and I don't know of anybody ever questioning that those statutory notices may be referred to and are referred to by the Court for the purpose of showing that adjustments

were made by the Commissioner in arriving at the deficiencies.

Mr. Cruikshank: For that purpose solely, I have no objection.

Mr. Maiden: That is the only purpose I had—for example, if the Court please, I am referring to the statutory notice in the case of Ida H. Switzer, the one I happen to have before me, and on page 2 of the statement attached to the notice of deficiency, the statement occurs:

“The following adjustments to the ordinary income of the Transit Mixed Concrete Company, a partnership, for the taxable years ended December 31, 1944, and 1945, are based upon an audit made of the books of the partnership and results in an increase of your share thereof as shown below.”

And then below is listed the ordinary net income, as disclosed by the partnership return for each of the years, and as additional income the following specifications appear:

“Portland Cement Company, special discounts.” As I say, that is addition to income, and in 1944 it is \$6,082.29, and in '45 it is \$19,265.66. The Court will find that that was unreported earned discounts.

The next item is “Discounts not taken by customers.” This is also in addition to income. In 1944 it was \$4,152.63, and in 1945 it was \$17,249.20.

The next item, which is likewise in addition to income, is “Sales tax *admitted* on invoices.” In 1944 the amount is \$20,864.23, and in 1945 it is \$36,776.34.

Then there is a small unidentified item, and then there is an item, "Corona—November, December Sales Omitted," which applies to the year 1945, in the amount of \$17,298.31.

Now, as I say, the pleadings in this case do not take issue with any of those adjustments. And simply for the purpose of showing these additions to income, I would like to have the statutory notices marked in evidence as Respondent's next four exhibits in order.

Mr. Cruikshank: Petitioners have no objection if it is only for the purpose of showing the amounts and general nature of the adjustments. However, we do not at all agree with some of the descriptions contained, describing these adjustments here, and when this motion is concluded I would ask counsel to stipulate on one or two of those.

The Court: Is that agreeable to counsel for the Respondent, that they be admitted for that limited purpose only?

Mr. Maiden: Of course, if the Petitioner has any proof that the Respondent has not properly characterized these items, why, then of course the Petitioner can prove what the correct designations should be. As I say, they are not put in issue of the pleadings as of this moment.

Mr. Cruikshank: If the Court please, we are not at issue on the deficiencies, except where the statute of limitations is concerned. I would object to these descriptive phrases in the statutory notice of deficiency being accepted in evidence as tending to prove fraud, which is the only thing at issue.

The Court: As I understand it, the only reason for Respondent offering these is to show the figures rather than the characterization.

Mr. Maiden: Well, I wanted to show the characterization, too, if the Court please.

Now, the Commissioner, in his statutory notice, has determined that certain additions should be made to income and he has set forth, he has determined the nature and character of that addition to income. Now, that is *prima facie* correct in the first place. In the second place, the pleadings in the case do not put into issue either the amounts or the characterization and nature of the additions to income, and unless and until Petitioner proves that these characterizations of the additions to income are incorrect, why, I think Respondent prevails on that. That is my position.

Mr. Cruikshank: If the Court please, this statutory notice of deficiency does not raise fraud. The Commissioner's conclusion at that time was that there was no fraud or, at least, not asserted. Now the Petitioner—

Mr. Maiden: That is his thinking up to that time, the basis of investigation up to that time.

Mr. Cruikshank: Well, his published statutory notice of deficiency.

Mr. Maiden: That is correct.

Mr. Cruikshank: We accepted in our Petitions—admitted the deficiencies as based upon the statutory notice of deficiency. But for the statute of limitations, we do not now wish to concede—first of all, the only thing that these statutory notices

are presumptively correct is the amount of deficiency and that is not in dispute.

We therefore ask that the Respondent be required to be put on proof that the types of these—

The Court: The Respondent has the burden of proof of fraud, and just because the statutory notice of deficiency goes into the record, the Respondent can't just stand on that and claim that he has sustained his burden of proving fraud, certainly not.

Mr. Cruikshank: But we would, if these phrases here, "Sales Tax Omitted on Invoices,"—if that is to go into evidence as a factor tending to prove that fact, we would like an opportunity to examine the person who arrived at the determination. Otherwise, we think it would not be taken into evidence.

The Court: Well, I will let it in for the limited purpose of showing the amounts and how the Commissioner arrived at his conclusion, but Petitioner needn't fear that this Court will use that characterization to permit the Respondent to sustain his burden of proof of fraud.

Mr. Maiden: Of course, it is the Respondent's position that the Petitioner stipulated to the full amount of deficiency, not only as set forth in the statutory notice, but also as set forth in the Amended Answer, in which increased deficiencies are asserted; that the Petitioner necessarily agrees and accepts as correct all of the adjustments made in the statutory notice.

The Court: All right, they will be received.

(The documents above referred to were received in evidence and marked Respondent's Exhibits K, L, M and N.)

Mr. Maiden: Now, if the Court please, there has been received in evidence a stipulation of facts. This stipulation of facts shows that for each of the taxable years these Petitioners received substantial amounts of income. As I pointed out, for one year all of them reporting and submitting it on the community basis of some fifteen thousand dollars, yet they admitted that they had net income that year of some seventy thousand dollars worth of income. The amounts which are admitted, that were not reported in each year, are very substantial. The statutory notice and the pleadings show the nature of this unreported income.

Upon the basis of this stipulation of facts, pleadings, the returns, and exhibits, Respondent maintains that at this point he has made a *prima-facie* case of fraud, and that if the Petitioner has any proof as to the reasons why these substantial amounts of income were not reported consistent with the absence of an intent to evade tax by fraudulent means, then Respondent submits at this time it is Petitioners' burden of proof—not of proof, but burden of going forward at this point with the evidence.

The Court: Have you submitted the statutory notices?

Mr. Maiden: Sir?

The Court: Have you filed the statutory notices?

Mr. Maiden: I didn't submit the statutory no-

tices. The practice that I follow, that is, the general practice is that the Clerk simply marks the statutory notices in the Court's file.

The Court: That would be all right.

Mr. Maiden: With the exhibit number next in order.

The Court: Mr. Cruikshank.

Mr. Cruikshank: First of all, I would like to point out, since Respondent has relied so heavily on the statutory notice of deficiency in the evidence for the limited purpose, as Exhibit K, that there is an additional adjustment of income to the partnership, that is, a reduction in income to correct an error whereby the sales from the Hollywood branch of this concern were reported twice, were duplicated in each of the two years. So that even using the very limited and perhaps inexact characterizations of these adjustments that appear in the statutory notice, it appears that there were errors in the records of this partnership which resulted in both an understatement and in an overstatement of the taxable income.

The Court: Is that a part of the stipulation? Is that in the stipulation?

Mr. Cruikshank: No, that is not.

Mr. Maiden: Those adjustments are shown in the statutory notice, if the Court please.

The Court: All right.

Mr. Cruikshank: Respondent has emphasized, in considering the stipulation, the great amount of difference between the reported net income of the partnership and the correct net income of the part-

nership. He has failed to point out to the Court another fact that also appears in the stipulation and on the face of the return itself, and that is that this partnership had gross receipts in excess of \$1,271,000.00 in 1944, and in that year, through errors in their bookkeeping and accounting procedures which work both ways, there was a net understatement which should be added to gross receipts properly, of \$20,000.00. That is less than two per cent of the total gross receipts that went through this business, through the books.

In 1945 the gross receipts were almost a million seven hundred and twenty-nine thousand some odd dollars. In that year the net amount by which the partnership income was understated to errors, both ways, was approximately \$68,000.00 or approximately four per cent of the total volume of dollars that went through the books. That doesn't appear to us that that constitutes fraud, merely from the understatement of income.

The Respondent has not in any way shown to the Court that there was any intent on the part of the taxpayers, any of the four individual taxpayers, to defraud or evade their income tax. The statute which he relies on for the fraud penalty requires an intent to fraud, with an intent to evade tax, resulting in an understatement of income. Nowhere in the exhibits or other documents on file or in evidence does there appear any intent, any indication of what these understatements could have been to; reliance upon reasonable advice of counsel, a difference of opinion as to whether the items were

taxable, or any of a number of other things which would be required. There is no concealment shown here.

Respondent has not shown that the books were a double set of books or that the adjustments which were made here were concealed.

As a matter of fact, we would show that every item was included in the books, even though characterized in here—for instance, “Corona—November, December Sales Omitted,” that that was omitted from the profit and loss statement, but they were all disclosed in the books.

There were errors, perhaps, in failing to make the proper adjustments, close the books at the end of each period, in minor records. But, nevertheless, they were all on the books. More than that, a complete audit was made by the taxpayers, on behalf of the taxpayers, and the results of that audit were made available to the Government before any examination by the Government had been made. And the audit which the statutory notice refers to as the basis of the statutory notice is the audit made by the taxpayers’ accountant and not the Revenue Agent.

The revenue agent’s report itself upon the statutory notice is based exactly—states that it is in full agreement with the audit presented to the Commissioner voluntarily by the taxpayers.

Mr. Maiden: Of course, I don’t agree that where they use the word “audit,” that they are talking about the audit of the taxpayers. It simply states that the Commissioner made audit in the case, and

I assume the audit he refers to there is the Commissioner of Internal Revenue.

Mr. Cruikshank: The Respondent assumes that he has carried his burden of proof in the absence of some rebuttal testimony on our part and must then assume that he has overcome the strong burden that has been declared to exist in other such cases. One such case is the matter of Mitchell vs. the Commissioner, "CCA5-1941, 118 F.2d, 308, 310—Negligence, whether slight or great, is not equivalent to the fraud or intent to evade tax named in the statute. The fraud meant is actual, intentional wrong-doing, and the intent required is the specific purpose to evade a tax believed to be owing. Mere negligence does not establish either."

And in Davis against the Commissioner, "CA10th-1950, 184 F.2d, 86, 87—Fraud implies bad faith, intention of wrong-doing and a sinister motive. It is never imputed or presumed and the courts should not sustain findings of fraud upon circumstances which at the most create only suspicion."

We do not believe the Respondent has any evidence in this record which intends to create intentional wrong-doing, specific sinister motives to evade and defraud tax owing by these taxpayers for the years involved.

As to the negligence penalty, there has been no showing on the part of the Respondent tending to show negligence. Negligence must necessarily imply that the taxpayer has a duty to properly report his income, to keep records necessary to allow him to do so. It must find that this taxpayer, or these

taxpayers, all four of them against whom the negligence penalty has been asserted, did not conform to the standard required of them in carrying out that duty, and the failure to measure up to that standard was due to some carelessness on their part. Respondent has not shown in any way that all the facts were not disclosed.

Davis Regulator Company, 36BTA, 437, against the Commissioner, "Honest misunderstanding or difference of opinion as to the character of certain income, omission of income, because of that, does not constitute negligence." Respondent has not shown in any way that the income omitted here did not come within that classification. He has not shown that this business is obviously a large one. It obviously is.

Also, its books, bookkeeping and returns and records are not maintained, obviously, by the two partners, and, even more certainly, by their two wives. He has not shown that there is unreasonableness or negligence on the part of the taxpayers in employing people to maintain their records or in relying upon this.

We feel he has utterly failed to even begin to prove fraud or negligence on the part of any of these taxpayers, and on that basis we would ask move of the Court at this time to dismiss the affirmative allegations in the Commissioner's Amended Answer and in the amendment thereto, in each of these cases relating to fraud and negligence penalties.

The Court: The motion is denied.

Mr. Maiden: If the Court please, the cases have consistently held that the omission of large and substantial amounts of income which the taxpayer admits that he received but did not report, in the absence of any reasons or explanations as to why he had all this income and didn't report it, is sufficient to invoke the provisions of the penalty and that is exactly what the stipulation of facts and the evidence now in the record shows.

Of course, I hardly think there would be any doubt but that a taxpayer receiving \$50,000.00 worth of income in a taxable year and reporting only \$5,000.00 would be considered guilty of the very grossest type of negligence, if not fraud. I don't think that it is necessary for me to say any more in opposition to counsel's motion.

The Court: Well, I have already denied the motion.

Mr. Maiden: I beg your pardon. I didn't hear it.

I should like the record to show whether Petitioner L. Glenn Switzer is in the courtroom.

Mr. Cruikshank: He is.

Mr. Maiden: Is Petitioner Howard A. Switzer in the courtroom?

Mr. Cruikshank: No, he is not. I realized the Commissioner served subpoenas on him, but counsel for Respondent and I have discussed it and I agreed fully to cooperate with him as to any books or individual records he might want in court. Since you did not request him, we did not feel it was necessary for him to be present, so we did not have him come over.

Mr. Maiden: Is Mr. Dansie in the courtroom?

Mr. Cruikshank: Yes, he is. Stand up, please.

Mr. Maiden: The returns in this case show that Mr. Dansie prepared both the partnership and individual returns for the taxable years. Is that correct?

Mr. Cruikshank: That is correct.

Mr. Maiden: I believe that is all.

The Court: All right.

Mr. Cruikshank: If the Court please, could we have a recess in view of the fact that Respondent wishes to rest?

The Court: We will take a short recess.

(Short recess taken.)

The Court: Mr. Cruikshank.

Mr. Cruikshank: If I may make one further statement to the Court. I would like to point out in connection with the negligence penalty asserted against the two wives in this case, Ida H. and Florence M. Switzer, that the documents in evidence now show that they derived this income solely under the laws of the State of California, that is, community, solely in their status as wives, and under the laws of this state the husband is to have the management and control and the right and duty to manage the community property and the community income.

On that basis and without any showing of anything to the contrary of that on the part of the Respondent, we would ask the Court to dismiss the negligence penalty asserted against the wives. In fact, we so move at this time.

Mr. Maiden: I oppose the motion on the ground that it hasn't been shown that the wives, in fact, did not know that they had more income than they were reporting. I think the motion is without merit and should be denied.

The Court: I am sorry, I can't hear you.

Mr. Maiden: I say in the absence of any evidence that the wives did not, as a fact, know that they had more income than they were actually reporting on their returns, I think the Petitioners' motion is without merit and should be denied, even though under the California law the husband is in charge of the community property. Still, if the wife knew that she was understating her income, why, then the matter of the California law, of course, would become irrelevant and immaterial.

The Court: Well, isn't the burden of proving that issue on the Respondent?

Mr. Maiden: On the negligence penalty?

The Court: Yes.

Mr. Maiden: Well, your Honor—

The Court: You pleaded affirmatively.

Mr. Maiden: And I take the position that when I show that one of these Petitioners received a substantial amount of income which they did not report on their return, that, *prima facie* at least, I have established negligence.

The Court: All right. I will deny your motion at this time, but I can certainly assure the Petitioners that if the record does not show that the Commissioner has sustained his burden of proof, there will surely be no fraud found or negligence

found. I don't know enough about the case at this particular time to know just exactly what the Respondent can prove by way of evidence. I have to study it.

Mr. Cruikshank: I would just like to clarify this last statement that counsel for Respondent made about these people receiving large amounts of income. This was partnership income. There is no evidence in this case that any of it was distributed to the individual's pocket, that he ever knew or she knew how much net income he or she might be taxable on. There is no necessary relationship between that, as to the amount they received, and the amount of income or profit they might be aware of.

I think one further stipulation that counsel has agreed to; that is, for neither of the years 1944 or 1945 was the statutory period for assessment extended by any waiver executed by any of the taxpayers and the Commissioner.

Mr. Maiden: So stipulated, your Honor.

The Court: The stipulation is received.

Mr. Cruikshank: With that, I believe Petitioners conclude their case, too.

I would like to point out to the Court, however, that in response to subpoenas issued by the Commissioner, Mr. L. Glenn Switzer is here in court. Stand up.

Mr. Dansie is here in court, and Mr. Fechtner is here in court, and Lyle Westcott. They are all here in response to the subpoenas, and available, if Respondent has any questions.

The Court: You may be seated.

Mr. Cruikshank: The books are also here. Mr. Howard Switzer is not here. He was subpoenaed, but counsel and I agreed to make it most convenient for all the parties.

Mr. Maiden: Are the books and records here in the courtroom?

Mr. Cruikshank: Yes, they are.

Mr. Maiden: May we stipulate that Mr. Dansie, who prepared the returns in these cases, was employed—an employee of the partnership during these years?

Mr. Cruikshank: During the years '44 and '45?

Mr. Maiden: That is right.

Mr. Cruikshank: I will stipulate that he worked for the partnership part time.

Mr. Maiden: Would you likewise stipulate that this partnership was subsequently incorporated and that Mr. Dansie is an official of the corporation?

Mr. Cruikshank: I don't see that that has any bearing.

Mr. Maiden: Then you don't stipulate, then?

Mr. Cruikshank: No.

Mr. Maiden: Very well, your Honor.

The Court: Does that conclude the case on both sides?

How much time would you like for briefs? I would like to have concurrent briefs. How much time would you like?

Mr. Cruikshank: If your Honor please, we would appreciate it, if it is agreeable to the Court, if we would file consecutive briefs. In other words, in this case, in view of the state of the record, the

Respondent, the Government, Mr. Maiden, representing the Government, does have the burden of proof. Now, I would like to suggest that he be given what time he reasonably needs to file an opening brief and let us reply to it.

The Court: Is that all right?

Mr. Maiden: If your Honor please, that cuts me off from any kind of a reply.

The Court: No, it doesn't. You can file a reply brief to their original brief.

Mr. Cruikshank: Mr. Maiden was talking about the Respondent filing an opening brief and Petitioners replying to Respondent's brief.

The Court: Then you can file a reply brief to that.

Mr. Maiden: I have no objection.

The Court: How much time do you need?

Mr. Maiden: I should like, and I don't want the Court to get mad at me—I have a tremendous load of briefs already. On my brief I should like 60 days.

The Court: You can have 90, if you want it.

Mr. Maiden: I should like that.

The Court: 90 days for Respondent's original brief.

How much time do you want?

Mr. Cruikshank: 30 days would be all right, but it takes two or three weeks—

The Court: 45 days?

Mr. Cruikshank: That would be fine.

The Court: 45 days for Petitioner's brief.

Mr. Maiden: Your Honor, 30 days.

The Court: 30 days for reply brief.

Mr. Maiden: Yes. If the Court please, I forgot to ask permission to withdraw the originals of these returns and substitute photostat copies.

The Court: Permission granted.

Mr. Cruikshank: This seems to be a morning of quick changes. We will be filing replies to the amendment to the Amended Answer. May we file those with the Clerk tomorrow morning?

The Court: Yes. That is all.

(Whereupon, at 11:45 o'clock a.m., Thursday, April 17, 1952, the hearing in the above-entitled matter was closed.)

[Endorsed]: T.C.U.S. Filed May 1, 1952.

FORM 1065
Internal Revenue Service

UNITED STATES

PARTNERSHIP RETURN OF INCOME

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1944

or fiscal year beginning Jan. 1, 1944, and ending Jan. 1, 1945

Return filed with the Valley office of Internal Revenue not later than the 10th day after the 15th month following the close of the taxable year.

(NAME, PLAIN NAME, AND BUSINESS ADDRESS OF THE ORGANIZATION)

Transit Mixed Concrete Company
(Former)3444 E. Foothill Boulevard
(Street and number)

Pasadena, California.

Business or Profession Mixed Concrete, Rock-Sand.

GROSS INCOME

File C
Serial No.
Date1944
8720445

RECEIVED

MAR 15 1945
FOLIO INT. REV.
LOS ANGELES, CAL.
No. 12

Corona.	67,057.34
La.	1,204,391.00
	1,371,448.34
	\$ XX
	775,594.95
	252,921.42
	1,028,516.44
	\$ XX
	\$ 42,931.90



Business or profession of partnership.

(a) Inventory at beginning of year

(b) Merchandise bought for sale

(c) Cost of labor, supplies, etc.

(d) Total of lines (a), (b), and (c)

(e) Less inventory at end of year

Less (or less) from business or profession of partner(s) (losses or gains) (or loss) from other partnerships, corporations, pools, etc.

Interest on bank deposits, notes, corporation bonds, etc. (interest income to be reported in item 6)

Interest on tax-free covenant bonds upon which partners have paid interest

Interest on Government obligations, etc.

(i) From Schedule A, line (1)

(ii) From Schedule A, line (2)

etc.

Gain (or loss) from sale or exchange of property other than capital assets (from Schedule D)

Dividends

Net income (less nature of income). Equipment Rental, 17,152.49. Misc. Sales-154.	141,090.04
Discounts earned, 140,612.60	1384,905.04
Total income in items 3 to 12	
	404.00

DEDUCTIONS

Salaries and wages (do not include compensation for partners)

etc.

etc.

Interest on indebtedness (except in Schedule F)

(Interest in Schedule C)

Losses by fire, storm, shipwreck, or other casualty, or theft (except in Schedule D)

Debt (except in Schedule D)

Depreciation (except in Schedule D)

Authorization of emergency facilities (except in Schedule F)

Extraction of mines, oil and gas wells, timber, etc. (except in Schedule F)

Other deductions authorized by law (except in Schedule F)

Total deduction in items 14 to 24

Gross profit (item 13 less item 25)

THE TAX COURT OF THE U.S.
DIV. 12 - ROCKET
APR 17 1952
PITTMAN'S
EX-1000-TV ✓

Short-term capital gain (or loss) (from Schedule G Summary, line 1, column 1)

Long-term capital gain (or loss) (from Schedule G Summary, line 2, column 1)

141,741.08
322,942.81
6,13,834.73

NUENT'S EXH A (CONT.)

Total (enter as item 18, pg. 1) **3,172,240.22**

Schedule D.—BAD DEBT EXPENSES (Section 20)

Year	1. Net income reported	2. Sales on account	3. Net amount of reported losses recovered on accounts receivable	4. Gross amount added to progress billings	5. Amount charged against progress billings
1941	\$ 4,800.57	\$ 706,658.68	\$ 8,469.77		
1942	\$ 85,912.83	\$ 1181,634.49	\$ 28,746.48		
1943	\$ 77,188.82	\$ 1375,188.94	\$ 193.99		
1944	\$ 77,584.82	\$ 1427,174.99	\$ 249.75		

1944 whether also from claims representations which have become worthless, or as an addition to a reserve.

Schedule E.—DEPRECIATION. (See Instruction 21.)

65-715118

Patent and Licensee.

Line 18.

Schedule C

partment Motor Vehicles License
es on Business Property
y Licenses, Corona, Inglewood, La.
tractors License
ighmaster Licenses
eral Use Stamps
eral Old Age
eral Unemployment Insurance
te Unemployment Insurance,
te Income Tax

4681.41
 £320.18
 36.00
 5.00
 44.50
 400.00
 £557.78
 761.33
 4851.86
 £02.18

Total Deductions,- 37940.80

Bad debts 1944

Item 20.

Schedule D.

llowing accounts were sold on 30-60 day time and we have not been
 to collect in spite of every attempt to do so.

Auger,	3.59	Mr. Cronkright	10.37	Fruit Products	19.86
ade	63.32	Paul Little	26.76	Super Products	16.53
agins	.50	Don Alexander	8.86	Geo. Dawson	13.65
Claenshen	98.43	C.L. Sparks	5.30	Spaulding Ranch	2.81
Watson	2.67	C. H. Smith	65.86	H. A. Stiles	66.76
Burrows,	12.31	Paul H. Lassen	176.31	M. Hammer	63.40

credit on accounts we collected, formerly charged off total above 639.79
Net loss Bad debts. 140.54 499.25

Schedule F.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 17 AND 20

2. Funktionen

1. Answer

Page No.
Page-0

Explanation (continued)

1

RESPONDENT'S EXH A (CONT.)

• 743 •

Schedule H—CONTRIBUTIONS OR GIFTS PAID. (See instructions for Schedule H.)

Total features in volume 2 English B

14

丁巳年夏

1944 Other Deductions

Schedule F.

Insurance PL & PD. Col. F&T	9222.74	Compensation Ins. (Corona)	797.24
Trucks & Equipment,		Compensation Ins. (LA)	1105.00
General Insurance	1541.41	Rental of equipment	3461.62
Office expense	2751.16	Telephone & Tel.	4916.24
Power, Light, Water,	7873.32	Eng. & Lab.	261.74
Advertising,	2522.66	Legal expense	260.00
Assn. Dues & Subsc.	630.53	General Expenses	3200.67
California Sales Tax deducted here as same included in Income (item-1)		Discounts allowed,	10241.40
Gasoline, Oil, Repairs,	102560.65	total:	

1044

Interest

Schadule 7

Table 17

Western Investment Co.,	509.28	Brown Bevis Equip. Co.	478.40
New York Life Ins. Co.	24.34	Ohio Nat'l Life Ins Co.	678.40
No. Am. Life Ins Co.	50.19	Provident Mutual Life	24.40
Penn Mutual Life Ins. Co.	50.26	State Bd of Equalization	1.40
National Life Ins of N.Y.	24.00	Bank of America, L.A.	571.00
A.C. Chapman Estate	15.04	Union Inv & Trust Co.	177.00
California Bank.	507.21		

DUPPLICATION CLASSIFIED

1-50

Acquired	Kind of Property	Estimated Life	Cost	Previous depreciation	1944 Depreciation	Balance to be recovered.
Feb.-36 to Sept. 44	Shop-Machinery- Tools,-	From 5 to 10 years.	19,658.04	2,183.30	2,898.55	14,616.05
Jan.-36 to Nov. 44.	Office Equipment and furnishings	From 4 to 10. years.	2,313.08	1,003.68	266.88	1,049.55
June-36 to Oct. 44.	Business Bldgs, Plants, & fixed equipment.	From 5 to 40 years.	156,884.43	37,718.17	14,306.55	84,959.75
Jan.-36 to Nov. 44.	Trucks, Trailers, Cranes, shovels, Miners, Automobiles, Tractors, Equipment, yrs.	From 2 to 5 years.	354,695.08	170,853.25	43,381.15	135,460.72
Totals at end of December 1944 ---			513,530.05	211,761.40	45,718.19	256,074.46

Schedule I.—PARTNERS' SHARES OF INCOME AND CREDITS. (See Instruction for Schedule I)

Page 4

1. Name and address of each partner (Designate nonresident aliens, if any) Name return of partner or member is filed in another collection district, specify district If the full name of any partner was not devoted to the business, the percentage of time devoted must be stated.	2. Ordinary net income less interest, on Government obligations, etc., subject to notice only (Item 2b, page 1, less Item 7(a), page 1).	3. Net short-term gain (or loss) from sale or exchange of capital assets (From Schedule G Summary, line 1, column 4).	4. Net long-term gain (or loss) from sale or exchange of capital assets (From Schedule G Summary, line 2, column 4).
L. Glenn Switzer, 3464 E. Foothill Blvd., Pasadena, Calif.	2/3	9,291.16	
Howard A. Switzer, 267 Sierra Madre Ave., Pasadena, Calif.	1/3	4,645.82	
Total			

CONTINUATION OF SCHEDULE I

Partially tax-exempt

6. United States savings bonds and Treasury bonds (line 6, Schedule A)	7. Interest on obligations of certain instrumentalities of the United States (line 6, Schedule A) less amortizable bond premium	8. Dividends on shares of Federal savings and loan associations (line 6, Schedule A)	9. Charitable contributions (From Schedule H)	10. Federal income tax paid at source (2 percent of item 6, page 1)
a. Principal	b. Interest less amortizable bond premium			

QUESTIONS

of organization June 1, 1930, Reorg. 3/26-40

Date of organization (partnership, syndicate, pool, joint venture,
Partnership)Is a return of income filed for preceding year? Yes If so, to which
Filer's office was it sent? Los Angeles, Calif.
whether this return was prepared on the cash or accrual
basis.whether inventories at the beginning and end of the taxable
year were valued at (a) cost, or (b) cost or market whichever is
higher. No stock kept, no inventory.If any other basis is used, attach statement describing basis fully,
state why used and the date inventory was last reconciled with
stock.

6. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a personal holding company, as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") No If answer is "Yes," attach list showing name and address of each such corporation and amount of stockholdership.
7. Was return of information on Forms 1096 and 1099, Form W-2 or Form W-2a, filed for the calendar year 1940? Yes
(See Instruction II.)

AFFIDAVIT (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and
to the best of my knowledge and belief is a true, correct, and complete return.L. W. Switzer 3/10-45
(Signature of officer administering oath) (Title)
DateEnsign Mixed Concrete Co.
(Name of firm or organization, if any)

Subscribed and sworn to before me this

13th day of March 1945
Signature of officer administering oath (Title)
My Commission Expires Mar. 9, 1947L. W. Switzer 3/10-45
(Signature of officer administering oath) (Title)
Date3464 E. Foothill Blvd., Pasadena
(Address of partner or member)

Subscribed and sworn to before me this

RESPONDENT'S EXH A (CONT.)

NOT INVESTIGATED

Page 1

UNITED STATES

PARTNERSHIP RETURN OF INCOME

1945

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1945

or fiscal year beginning Jan. 1st, 1945, and ending Dec. 31st, 1945

(File this return with the Collector of Internal Revenue not later than the 15th day of the 3d month following the close of the taxable year)

(PRINT PLAINLY NAME AND BUSINESS ADDRESS OF THE ORGANIZATION)

TRANSIT MIXED CONCRETE COMPANY,

3464 E. Highhill Avenue

Pasadena, California.

Business or Profession Mixed concrete, Block-Sand.

Do Not Use These Spaces

File Code C 907Serial No. 8706416District 6-Calif.

(Date Received)

RECEIVED

MAR 15 1946

COLL. INT. REV.

ANGELUS, CAL.

No. 16

GROSS INCOME

4,729,485.97

	xx	xx
xx	xx	xx
xx	xx	xx
xx	xx	xx

1,389,985.53\$ 339,510.44

gross receipts from business or profession.

in cost of goods sold:

- (a) Inventory at beginning of year
- (b) Merchandise bought for sale
- (c) Cost of labor, supplies, etc.
- (d) Total of lines (a), (b), and (c).
- (e) Less inventory at end of year

Less profit (or loss) from business or profession (item 1 less item 2).

Less (or loss) from other partnerships, syndicates, pools, etc. (Show separately name, address, and amount.)

Interest on bank deposits, notes, corporation bonds, etc. (except interest to be reported in item 6).

Interest on tax-free covenant bonds upon which a Federal tax was paid at source.

Interest on Government obligations, etc.:

- (a) From Schedule A, line (f).
- (b) From Schedule A, line (i).

Interest on:

Gain (or loss) from sale or exchange of property other than capital assets (from Schedule B) ...

Dividends

Net income (less taxes of income) Sale Mine Mtgs 3700.06—Equip. Rental 20,828.64

Income-Housing project 5,803.73—Dissets earned 154,187.06—Misc. 524.50

Total income in items 3 to 12. 5,526,068.71

DEDUCTIONS

Salaries and wages (do not include compensation for partners)

Wages

Interest on indebtedness (amount in Schedule F) ...

(Amount in Schedule C)

Losses by fire, storm, shipwreck, or other casualty, or theft (amount in Schedule D)

(Amount in Schedule C)

Depreciation (amount in Schedule D)

Expenditure of emergency facilities (amount in Schedule F)

Sale of mines, oil and gas wells, timber, etc. (amount in Schedule D)

Other deductions authorized by law (amount in Schedule F)

Total deductions in items 14 to 24. 336,758.55Gross net income (item 13 less item 25) 5,189,310.16

Short-term capital gain (or loss) (from Schedule G Schedule, line 1, column 3)

Long-term capital gain (or loss) (from Schedule G Schedule, line 2, column 3)

THE TAX OFFICE OF THE U.S.
BY John Doe BOCHET
APPROVED BY MANAGER
Los Angeles
APR 17 1952

PETITIONER	EXHIBIT <u>B</u>
REPRESENTATIVE	SEARCHED <u>✓</u>

P-47
 TREASURY DEPARTMENT
 INTERNAL REVENUE SERVICE
 LOS ANGELES, (12) CALIFORNIA

reply refer to
 IT-NP

July 2, 1948

Unit Mixed Concrete Company
 34 E. Foothill Blvd.
 Pasadena, California

Attention:

An examination of your income tax return for the taxable year 1945 -----, discloses that the affidavit is not properly executed.

You are requested to return this letter within 10 days from date hereof with the affidavit heron properly executed.

Very truly yours,

Barry C. Westover, Collector

By

C. J. Hogan
 C. J. Hogan
 Chief Income Tax Division

AUG 11 1948
 REC'D. IN
 1948

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief is a true and complete return, made in good faith for the taxable year stated, pursuant to Section 187 of the Internal Revenue Code and the Regulations issued thereunder.

Born to and subscribed before me
 is Wm S. Bailey day of August, 1946.

C. J. Hogan
 Signature of Member of Partnership

Notarial --
 Seal --

3464 E. Foothill Blvd Pasadena
 Address of partner or member

Wm S. Bailey
 Name of officer administering oath.

RESPONDENT'S EXH (B. CONT.)

Notary Public
 (Title)
 My Commission Expires Mar. 21, 1950.

RESPONDENT'S EXH (B CONT.)

Taxes -160

Truck license & tax for year	\$7,850.37
General property tax	2,804.12
Federal O.A.	3,560.62
Federal U.I.	1,067.20
State U.I.	9,613.56
	\$24,875.97

Schedule C.—TAXES. (See Instruction 18)

Nature	Amount	Nature (continued)	Amount (continued)
3		4	

Schedule attached.

Total (enter as item 18, page 1)

\$24,875.97

Schedule D.—BAD DEBTS. (See Instruction 20)

2. Net income reported	3. Sales on account	4. Bad debts of organization if no reserve is carried on books	If organization carried a reserve	
			5. Gross amount added to reserve	6. Amount charged against reserve
25,912.65	1,161,634.49	28,946.82		
57,182.62	1,375,168.94	105.34		
12,986.75	1,271,648.94	499.35		
15,552.71	1,729,496.97	544.75		

Check whether deduction claimed represents debts which have become worthless or is an addition to a reserve

Schedule E.—DEPRECIATION. (See Instruction 21)

Property (if buildings, state of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondeprecia- tive property)	4. Assets fully de- preciated or not at end of year	5. Depreciation al- lowed (or allow- able) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in computing de- preciation	8. Estimated remaining life from beginning of year	9. Depreciation al- lowed this year
	5	5	5	5	5	5	5	5

Depreciation as per schedule attached

(enter as item 21, page 1)

\$9,585.00DEPRECIATION CLAIMED
Item 21, Schedule E.

Kind of Property	Estimated Life	Cost	Prev. Deprec.	1945 Deprec.	Balance to Recover.
1946	from 5 to	20,454.04	8041.94	4618.87	10,787.63
1946 Shop Machinery Tools	10 yrs.				
946 Office equipment	from 4 to 10	2,262.65	1272.65	263.45	734.65
946 Furniture	years				
-96 Business buildings	from 5	55,029.01	22045.67	2743.65	27,435.65
Plants and	to				
-45 Fixed equipment	40 yrs	106,787.87	36576.75	10026.47	60,015.62
1946 Trucks, Mixers, tires to		406,705.51	191740.98	70199.62	144,745.91
Automobiles	5	8,000.05	5525.45	1549.35	1,750.60
1946 Shovels, cranes, street, years		56,817.45	18449.85	10036.57	28,329.93

\$100,000. worth of new and truck & mixer equipment purchased Jan. 1st, 1946.

632,916.74 251,915.21 37,650.94 27,1,000.00

Schedule F.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 17 AND 24

Page 17

No.	2. Explanation	3. Amount	4. Item No. (continued)	5. 2. Explanation (continued)
	See Schedule	4,176.44	26	See Schedule 10 \$4,176.44

Schedule H.—CONTRIBUTIONS OR GIFTS PAID. (See Instruction for Schedule I)

Name and address of organization	Amount	Name and address of organization (continued)	Amount (continued)
	\$		
		See schedule attached	1,125.00
		Total (enter in column 9, Schedule I).	

Interest Paid- Item 17

Western Investment Company	544.80
Bank of America	404.93
California Bank	577.68
Union Bank & Trust Company	43.26
J. F. Pierce	386.28
New York Life Ins	24.34
Provident Mutual	69.61
Brown Bevis Equipment Co.	665.00
A. V. Wagner	780.00
Ohio National Life Insurance	637.06
No. Am. Life Ins. Co.,	59.19
Braman & Dickerson	44.34
	4,176.44

70

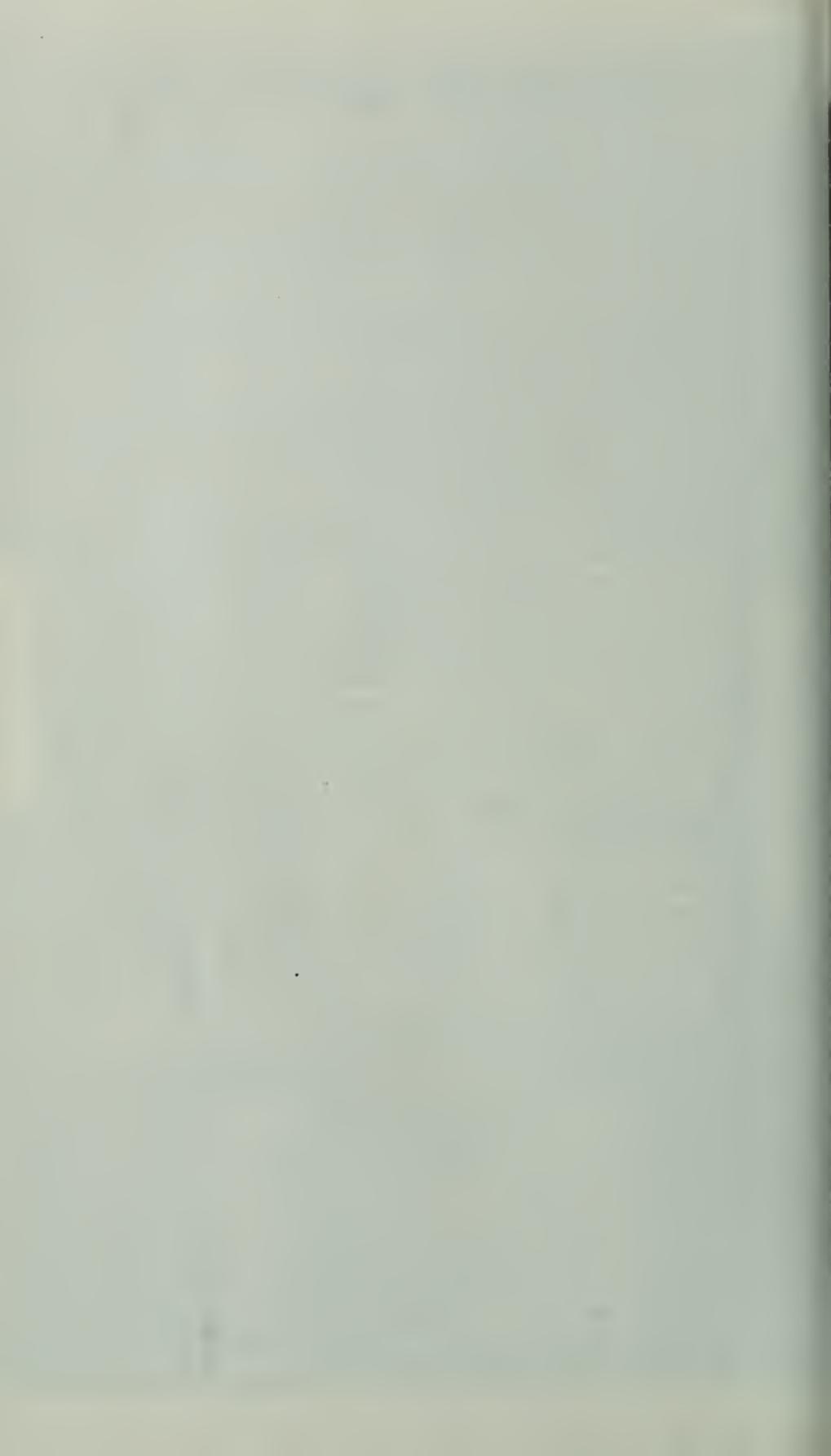
Bad Debts -Schedule 20.

on Outstanding accounts, disputed and uncollectable			
J. Benfield	52.50	Claude Fox	24.56
Boosman Co.	22.51	Jack Justice	8.36
Johnson Lumber	255.25	H.E. Boyer	55.74
H. Serensen	37.89	M. Gilliland	32.63
United Auto Co	16.81	J.C. McCormick	21.47
W. H. Wade	15.62	O.K. Oswald	41.00
Yellow cab	6.04	Accounts collected	
Cobb Motor Co	50.00	1945, prior bad debts,	60.28
		Net Bad Debt Loss	545.76

Other Deductions 24F

Gasoline & Oils	62,304.44
Truck repairs	95,376.74
Truck Insurance	734.39
Equipment rental	4,147.73
Stationery & Office Supplies	2,826.45
Telephone & Telegraph	5,301.99
Power, light & water	9,651.18
General Insurance	11,541.19
Advertising	2,664.06
Association dues	1,394.34
General expense	6,424.49
Discounts allowed,	107,303.55
State sales tax, same inc in total sales,	4,176.44
	436,735.55

RESPONDENT'S EXH. (B. CONT.)



Schedule I.—PARTNERS' SHARES OF INCOME AND CREDITS. (See Instruction for Schedule I.)

10

**1. Name and address of each partner
(Business partnerships allow 4 only)**

(Designate nonresident aliens, if any)
Where return of partner or member is filed in another collection district, specify district.
If the full time of any partner was not devoted to the business, the
percentage of time devoted must be stated

L. Glenn Switzer 3464 E. Foothill
Howard A. Switzer 267 Sierra Madre
Villa Ave. Pasadena

2. Ordinary net income less interest on Government obligations, referred to above, line 1, less (line 2b, page 1, less item 7 (a), page 1)	3. Net short-term gain (or loss) from sale or ex- change of capital assets (from Schedule C State- ment, line 1, column 6)	4. Net long-term gain (or loss) from sale or ex- change of capital assets (from Schedule C State- ment, line 2, column 6)
\$ 10,281.41 5,110.90		

CONTINUATION OF SCHEDULE

QUESTIONS

Date of organization June 1930, Reg. No. 3/26-40

nature of organization (partnership, syndicate, pool, joint venture, etc.) **Partnership**

as a return of income filed for preceding year? **yes** If so, to which collector's office was it sent? **Ind. St. 1-1**

Check whether this return was prepared on the cash or accrual basis.

State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market whichever is higher

If any other basis is used, attach statement describing basis fully, state why used and the date inventory was last reconciled with stock.

6. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a person holding company, as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") **No**. If answer "Yes," attach list showing name and address of each such entity.

poration and amount of stockholdings.

7. Was return of information on Forms 1096 and 1099, or Form W-2, filed for the calendar year 1945? Yes
(See Instruction 14.)

ABERDAYIT (See Instruction P)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

D. C. Danie 5/25-46
Date of person (other than witness or member) whose name is listed above

R. Glenn Smith 3/13-46

West Mixed Concrete Company.

3464 N. Foothill Blvd., Pasadena, Calif.

scribed and sworn to before me this

Submitted and proven to before me this

day of 121

124

[View all posts by **John**](#) | [View all posts in **Uncategorized**](#)

11

11

RESPONDENT'S EXH (B. GANT)



U.S. INDUSTRIAL HOME TAX RETURN

FOR CALENDAR YEAR 1944

Form 1040-A
Schedule A
Part I
Part II
Part III

200000

1944

Mr. George S. Smith

Address: 3000 Park Boulevard, Room

Baltimore, Maryland 21211

95

Mr. George S. Smith



Mr. George S. Smith
3000 Park Boulevard
Baltimore, Maryland 21211

(1) \$100
(2) \$100

Mr. George S. Smith

Mr. George S. Smith

Mr. George S. Smith

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1944

2410429

1944

or fiscal year beginning Jan. 1, 1944, and ending Jan. 1, 1945.

EMPLOYEES.—Instead of this form, you may use your Withholding Receipt, Form W-2 (Rev.), as your return, if your total income was less than \$5,000, consisting wholly of wages shown on Withholding Receipts or of such wages and not more than \$100 of other wages, dividends, and interest.

NAME L. Glenn Switzer

(PLEASE PRINT. If this return is for a husband and wife, use both first names.)

ADDRESS 3464 East Foothill Blvd., Pasadena, California.

(PLEASE PRINT. Street and number or rural route)

(City or town, postal zone number) (State)

Social Security No. (if any).

Do not write in these areas.

File

Code

Serial No.

District

(Cashier's Stamp)

REC'D WITH REMITTANCE

95

MAR 15 1945

COLL. INT. REV.

1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband). List names of other close relatives with 1944 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

NAME (Please print)	Relationship	NAME (Please print)	Relationship
Your name <u>L. Glenn Switzer</u>	xxxxxx		



2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, BEFORE SAT-ROLL REDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses see instruction 2.

PRINT EMPLOYER'S NAME	WHERE EMPLOYED (CITY AND STATE)	AMOUNT IN THE TAX COURT OF THE U.S. DIV 42 Docket No. 100-1414-Exhibit I REMITTED IN EVIDENCE APR 17 1952 Petitioner Enter total here → EXHIBIT I EMPLOYER'S
		\$ 4,645.58

3. Enter here the total amount of your dividends and interest (including interest from savings accounts) unless wholly exempt from taxation)

4. If you received any other income, give details on page 3 and enter the total here

5. Add amounts in items 2, 3, and 4, and enter the total here

If item 5 includes income of both husband and wife, show husband's income here, \$ 4,645.58; wife's income here, \$ 0.

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 2. This table, which is provided by law, is based on the same tax rates as are used in the Tax Computation on page 4. The table automatically allows about 16 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 4.

IF YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 4. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

6. Enter your tax from table on page 2, or from line 15, page 4.

7. How much have you paid on your 1944 income tax?

(A) By withholding from your wages (Attach Withholding Receipts, Form W-3). \$ 674.58
(B) By payments on 1944 Declaration of Estimated Tax. \$ 0

Enter total here → EXHIBIT I
EMPLOYER'S

8. If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here.

9. If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here.

Check (✓) whether you want this overpayment: Refunded to you or Credited on your 1945 estimated tax

You filed a return for a prior year, what was the latest year? 1943

which Collector's office was it sent? Los Angeles

which Collector's office did you pay

amount claimed in item 7 (B), above? Los Angeles, Calif.

Is your wife (or husband) making a separate return for 1944? YEA

If "Yes," write below:

Name of wife (or husband) Ida H. Switzer

Collector's office to which sent Los Angeles, Calif.

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, and complete return.

C. E. Nease L. Glenn Switzer Spouse, L. Glenn Switzer
(Signature of person (other than taxpayer or agent) preparing return) (Signature) (Signature)

(Name of firm or employer, if any)

(If this is a joint return of husband and wife, it must be signed by both)

(SEE TAX TABLE BELOW)

38-1400-1

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

Name and address of partnership, syndicate, etc. Transit Mixed Concrete Co. Amount \$ 0

Name and address of estate or trust Pasadena, California. Amount \$ 2,291.14

Other sources (state nature) Total Amount 4,645.58 4,645.58

Total to Spouse, Ida H. Switzer 4,645.58

File this return with Collector of Internal Revenue on or before March 15, 1946. Any balance of tax due (item 8, below) must be paid in full with return. See separate Instructions for filling out return.

FORM 1040
Treasury Department
Internal Revenue Service

**U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1945**

1945

or fiscal year beginning Jan. 1, 1945, and ending Jan. 1, 1946

Do not write in these spaces

File
Code

Serial No. **764-1737**

District

(Cashier's Stamp)

RECEIVED

MAR 15 1946

Off Cm. Div.

CREDIT ALLOWED

Amount \$ **87**

NAME L. Glenn Switzer

(PLEASE PRINT. If this return is for a husband and wife, use both first names)

Soc. Sec. No. **595863**

ADDRESS 3404 E. Foothill Blvd., Pasadena, Calif.

Ent. # **.....**

(City or town, postal zone number)

Post Dist. of Calif. **.....**

(County)

Occupation **.....**

(State)

Social Security No. **.....**

List your own name, if married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband). List names of other close relatives (as defined in Instruction 1) with 1945 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Your Exemptions

1.	Name (please print)	Relationship	Name (please print)	Relationship
	Your name L. Glenn Switzer

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1945, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. All additional amounts to persons claiming traveling or reimbursed expenses.

2.	First Employer's Name	Where Employed (City and State)	Employer's Name	THE TAX COURT OF THE U.S. DIV. DOCKET EXHIBIT NO. APR 17 1952 RESPONDENT'S 10,221.81

4. Enter here the total amount of your dividends and interest (including interest from government obligations unless wholly exempt from taxation).

5. Add amounts in items 2, 3, and 4, and enter the total here.

If item 5 includes incomes of both husband and wife, show husband's income here, \$ **5,110.91**; wife's income here, \$ **5,110.90**. **1/2 to each spouse**

IF YOUR INCOME WAS LESS THAN \$5,000. You may find your tax in the Tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS \$5,000 OR MORE. Disregard the tax table and compute your tax on page 2. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE—If husband and wife file separate returns, and one itemizes deductions, the other need also itemize deductions.

How to Figure Your Tax

6. Enter your tax from table on page 4, or from line 15, page 3.

\$ **1,060.00**

7. How much have you paid on your 1945 income tax?

(A) By withholding from your wages \$ **1,060.00**
(B) By payments on 1945 Declaration of Estimated Tax. Enter total here **1,060.00**

8. If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here.

\$ **0**

9. If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here.

\$ **0**

Check () whether you want this overpayment: Refunded to you or Credited to your 1946 estimated tax

If you filed a return for a prior year, what was the latest year? **1944**

To which Collector's office was it sent? **Los Angeles**

To which Collector's office did you pay? **Los Angeles**

Amount claimed in item 7 (B), above: **.....**

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief in a true, correct, and complete return.

L. Glenn Switzer **3/16/46** *L. Glenn Switzer* **3/16/46**

(Signature of person (other than taxpayer or agent) preparing return) (Date) (Signature of taxpayer) (Date)

Franklin Mutual Life Insurance Company **.....** (If this is a joint return of husband and wife, it must be signed by both)

14-4482-1

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 5, page 1. This is your Adjusted Gross Income	\$ 5,110.91
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500)	\$ 500.00
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	\$ 4,610.91
4. Enter your Normal-Tax Exemption (\$500 if return includes income of only one person, otherwise see Tax Computation Instructions)	\$ 500.00
5. Subtract line 4 from line 3. Enter the difference here. (If line 3 includes partially tax-exempt interest, see Tax Computation Instructions)	\$ 4,110.91
6. Enter here 3 percent of line 5. This is your Normal Tax. (Figure your Surtax below and enter in line 10)	\$ 123.36
7. Copy the figure you entered on line 3, above	\$ 4,110.91
8. Enter your Surtax Exemptions (\$500 for each person listed in item 1, page 1)	\$ 500.00
9. Subtract line 8 from line 7. Enter the difference here. This is your Surtax Net Income	\$ 4,110.91
10. Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 9. Enter the amount here	\$ 869.10
11. Add the figures on lines 8 and 10, and enter the total here. (If alternative tax computation is made on separate Schedule D, enter here 3 percent of line 10 of Schedule D)	\$ 992.46

In the United States Court of Appeals
for the Ninth Circuit

Docket No. 28256

L. GLENN SWITZER, Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

1. The petitioner, L. Glenn Switzer, represents
that on the 5th day of October, 1953, The Tax Court
of the United States entered a decision holding that
there are deficiencies in the income tax liability and
penalties due from this petitioner, as follows:

Year	Deficiency	5% Negligence Penalty
1944.....	\$ 2,258.86	\$112.94
1945.....	11,074.91	553.75

The petitioner asks a review of said decision by
this Court, the United States Court of Appeals for
the Ninth Circuit.

2. The controversy involves two issues, in which
petitioner's position is as follows:

(a) The Tax Court erred in holding that the five
year period of limitations on assessment of de-
ficiencies as provided in Section 275(c) of the In-
ternal Revenue Code [26 U.S.C.A., Sec. 275(c)] is
applicable in this case; and

(b) The Tax Court erred in holding that the 5% negligence penalty provided by Section 293(a) of the Internal Revenue Code [26 U.S.C.A., Sec. 293(a)] is applicable in this case.

3. The petitioner resides in the County of Los Angeles, State of California, and the income tax returns for the years in question were filed with the Collector of Internal Revenue at Los Angeles, California, all within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Wherefore, the petitioner prays that this Court review said decision of The Tax Court of the United States pursuant to the applicable statutory provisions and the Rules of this Court.

Dated: December 30, 1953.

/s/ WILLIAM A. CRUIKSHANK, JR.,
Attorney for Petitioner

Duly Verified.

Affidavit of Service by Mail attached.

[Endorsed]: T.C.U.S. Filed January 4, 1954.

[Title of U.S. Court of Appeals and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the Tax Court:

You will please transmit and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit copies duly certified as correct of the following documents and records in the above entitled

cause in connection with the petition for review by said Court of Appeals for the Ninth Circuit heretofore filed by L. Glenn Switzer:

1. Docket entries of the proceedings before the Tax Court.

2. Pleadings before the Tax Court:

(a) The petition including the annexed copy of the deficiency letter.

(b) The answer.

(c) Respondent's amended answer.

(d) Petitioner's reply to amended answer.

(e) Respondent's amendment to amended answer.

(f) Petitioner's reply to amendment to amended answer.

3. Findings of fact, opinion and decision of the Tax Court.

(a) Findings of fact and opinion promulgated June 30, 1953.

(b) Judgment entered on or about October 5, 1953.

4. Petition for review of the decision of the Tax Court and assignment of error, together with proof of service of notice of filing the petition for review and service of a copy of the petition for review.

5. Stipulation of facts received in evidence.

6. All exhibits filed in evidence are to be transmitted to the Clerk of the Court of Appeals for the Ninth Circuit in physical form.

7. This praecipe.

/s/ WILLIAM A. CRUIKSHANK, JR.,
Attorney for Petitioner.

[Endorsed]: T.C.U.S. Filed Jan. 11, 1954.

[Title of U.S. Court of Appeals and Cause.]

NOTICE OF FILING DESIGNATION
OF CONTENTS OF RECORD
ON REVIEW

To: Daniel A. Taylor, Chief Counsel, Internal Revenue Service.

You are hereby notified that L. Glenn Switzer did on the 11th day of January, 1954, file with the Clerk of The Tax Court of the United States, at Washington, D.C., a designation of contents of record on review for the Ninth Circuit, in the above-entitled case. Copy of the designation of contents of record on review as filed is hereto attached and served upon you.

Dated this 11th day of January, 1954.

/s/ VICTOR S. MERSCH,
Clerk, The Tax Court of the
United States.

Acknowledgment of Service attached.

[Endorsed]: T.C.U.S. Filed Jan. 11, 1954.

The Tax Court of the United States
Washington

[Title of Causes 28256-7-8-9.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 49, inclusive, constitute and are all of the original papers and proceedings on file in my office, including Exhibits A through N, as called for by the "Designations as to Contents of Record on Review," and including also the official transcript of proceedings before this Court on April 17, 1952, in the proceedings before The Tax Court of the United States in the above entitled proceedings and in which the petitioners in The Tax Court proceedings have initiated appeals as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 18th day of January, 1954.

[Seal] /s/ VICTOR S. MERSCH,

Clerk, The Tax Court of the
United States.

[Endorsed]: No. 14217. United States Court of Appeals for the Ninth Circuit. L. Glenn Switzer, Ida H. Switzer, Howard A. Switzer and Florence M. Switzer, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petitions to Review Decisions of The Tax Court of the United States.

Filed: January 30, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
For The Ninth Circuit

No. 14217

L. GLENN SWITZER, et al.,

Petitioners on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

STATEMENT OF POINTS UPON WHICH
PETITIONERS INTEND TO RELY AND
DESIGNATION OF RECORD

Come now petitioners, L. Glenn Switzer, Ida H. Switzer, Howard A. Switzer and Florence M. Switzer, and cite the following points upon which they intend to rely for reversal of the judgment of the Tax Court, Hon. Stephen E. Rice, Judge:

1. The Tax Court erred in holding that only the net income of the partnership in question which was distributable to the petitioners is a part of their respective gross incomes for purposes of Section 275 (c) of the Internal Revenue Code, and that, therefore, the five year period of limitations on the assessment of income tax deficiencies is applicable in these cases.
2. The Tax Court erred in holding that the evidence was sufficient to support a finding that petitioners L. Glenn Switzer and Howard A. Switzer were negligent in keeping their accounts and rendering their income tax returns, and that, therefore, the 5% negligence penalty under Section 293 (a) of the Internal Revenue Code should be imposed against each of said petitioners.

The petitioners designate the entire record as certified by the Tax Court to the Court of Appeals for the Ninth Circuit as necessary for a consideration of the points upon which they intend to rely.

Dated this 10th day of February, 1954.

BAIRD & CRUIKSHANK

/s/ By WILLIAM A. CRUIKSHANK, JR.
Attorney for Petitioners.

[Endorsed]: Filed February 11, 1954. Paul P.
O'Brien, Clerk.

[Title of U.S. Court of Appeals and Cause.]

STIPULATION FOR CONSOLIDATION

It is hereby stipulated by the parties hereto through their attorneys that the four above captioned cases may be consolidated for review by the United States Court of Appeals for the Ninth Circuit.

BAIRD & CRUIKSHANK

/s/ By **WILLIAM A. CRUIKSHANK, JR.**
Attorneys for Petitioners.

/s/ **H. BRIAN HOLLAND,**
Assistant Attorney General,
Attorney for Respondent.

So ordered:

/s/ **WILLIAM DENMAN,**
Chief Judge.

/s/ **WM. HEALY,**

/s/ **HOMER T. BONE,**
United States Circuit Judges

[Endorsed]: Filed Mar. 3, 1954. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

**STIPULATION RE: TRANSCRIPT
OF RECORD**

To the Court of Appeals for the Ninth Circuit:

It is hereby stipulated and agreed by the parties hereto, through their respective counsel, that the

questions presented in the appeals of petitioner, L. Glenn Switzer and Howard A. Switzer are identical, except as to differences in amounts involved; and that the questions presented in the appeals of Ida H. Switzer and Florence M. Switzer are identical, except as to differences in amounts involved.

It is further stipulated and agreed that the principal question presented in each of the four appeals, relating to the statute of limitations, is identical, but that the appeals of Ida H. Switzer and Florence M. Switzer do not involve the secondary issue relating to the negligent penalties presented in the appeals of L. Glenn Switzer and Howard A. Switzer.

Accordingly, it is agreed that only the pleadings, stipulations and exhibits from the Tax Court in the case of L. Glenn Switzer need be printed in the record for consideration by this Court, and that such documents from the Tax Court in the cases of the other petitioners need not be so included in the printed record for this Court, but any part thereof may be printed in appendices to the briefs of the parties and may be considered by the Court.

BAIRD & CRUIKSHANK

/s/ By WILLIAM A. CRUIKSHANK, JR.

Attorneys for Petitioners.

/s/ H. BRIAN HOLLAND,

Assistant Attorney General, Tax Division, Department of Justice, Washington, D.C., Attorney for Respondent.

[Endorsed] : Filed Mar. 23, 1954. Paul P. O'Brien,
Clerk.

